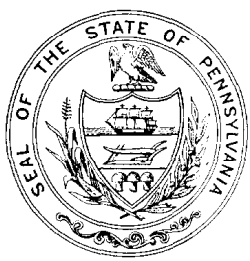
REFERENCE MANUAL NO. 4

Local Government



THE PENNSYLVANIA
CONSTITUTIONAL CONVENTION

The Preparatory Committee for the Constitutional Convention has prepared a series of nine Reference Manuals for the information of the delegates to the Convention. They are intended to give delegates general information on the Convention, to present a brief history of the several constitutions of Pennsylvania, and to provide pertinent information concerning each of the subject areas that the Convention is authorized to consider. The nine Manuals are—

No. 1 The Convention
No. 2 Constitutions of Pennsylvania—
Constitution of the United States
No. 3 A *History of Pennsylvania Constitutions*
No. 4 Local Government
No. 5 The Judiciary
No. 6 Legislative Apportionment
No. 7 Taxation and State Finance
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LOCAL GOVERNMENT

The Pennsylvania Constitutional Convention
1967–1968

Local Government

REFERENCE MANUAL NO. 4

Prepared for the Delegates by
THE PREPARATORY COMMITTEE
Raymond J. Broderick, Lieutenant Governor, *Chairman*

Commonwealth of Pennsylvania

CONSTITUTIONAL CONVENTION

1967–1968

* * *

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Foreword

Act Number 2, adopted in March, 1967, and ratified by Pennsylvania's voters the following May, authorizes the convening of a Constitutional Convention on December 1, 1967, for a period of three months.

The Act also provides for a Preparatory Committee, to be composed of the Lieutenant Governor and twelve officers of the General Assembly, listed opposite. The Act further stipulates that: "The Committee shall initiate any studies, inquiries, surveys or analyses it may deem relevant through its own personnel or in cooperation with any public or private agencies, including institutes, universities, foundations or research organizations."

Responding to this assignment, the Preparatory Committee appointed a staff under the direction of John W. Ingram, to plan and coordinate its studies. It also appointed four Directors, each commissioned to direct studies in one of the four subject areas within the jurisdiction of the Convention.

In commissioning the studies, the Preparatory Committee directed the staff to trace the historical development of each subject; to analyze judicial interpretations, experience in other states, and national trends; to identify the issues and to compile alternative proposals for constitutional changes to be considered by the Convention. Specific instructions were given the directors to refrain from making any evaluation of alternative proposals cited in the studies, it being the intent of the Preparatory Committee that such evaluations are the proper function of the Convention.

Results of the studies in each area are presented in a series of Reference Manuals, specifically intended to serve as reference sources to which the delegates might turn during their deliberations for information on the many and complex questions which may come before the Convention.

The Preparatory Committee was exceedingly fortunate to secure as Directors for the studies four eminently distinguished authorities. William G. Willis, Vice President and Secretary of Temple University, directed the re-

search and the preparation of this Reference Manual on the subject of Local Government.

The Preparatory Committee appreciates the significant personal contribution of Mr. Willis who dedicated his time and skill to the completion of this Manual within an extremely limited time schedule. Appreciation is also extended to Temple University for sharing Mr. Willis' time with the Committee. The Preparatory Committee is pleased to submit this Reference Manual to the Convention delegates, for whose assistance it is intended.

Raymond J. Broderick
Chairman

Preface

Local government may or may not be, as someone has said, the political equivalent of motherhood, but in the forum of constitutional discussion, allegiances are strong and the argument is vigorously pressed that the pattern of the local fabric, to use Justice Holmes' phrase, "should be touched only with cautious hands." There is unmistakably, however, a large body of thought in the direction of substantial and rather fundamental constitutional change. Within very rigid limits of both space and time, the writers of this volume have attempted to organize fairly comprehensive background and reference materials, without advocacy of either view. Their sole purpose has been to provide the Constitutional Convention with a broad base for the discussion of issues and a broad range of alternatives for decision.

The research which underlies the compilation of this volume has included a review of constitutional development in Pennsylvania beginning with the Constitution of 1790; a study of the reports of the constitutional revision commissions appointed by Governors Sproul, Earle, Leader and Scranton; a survey of the literature of local government, particularly with reference to recent constitutional developments in other states and proposals of national municipal organizations; an examination of pertinent materials on the structure and form of local government in Pennsylvania and judicial interpretation of relevant constitutional provisions; and an analysis of those provisions relating to local government which appear in the constitutions of the other forty-nine states.

The volume in its final form is the result of the collaborative effort of a number of persons. Special and generous acknowledgment is due The Pennsylvania Economy League, Eastern Division, Lennox L. Moak, Director, Dr. Edwin Rothman, Director of Research, and Mitchell Hunt, Research Associate; the Government Studies Center of the Fels Institute of Local and State Government of the University of Pennsylvania, Charles P. Cella, Jr., Administrator, and Gail Ornstein, Research Assistant; the Institute of Local Government of the University of Pittsburgh, Dr. Joseph A. James, Director,

Edward Foster, Associate Director, and J. Christine Altenburger, Research Associate. The work done by these persons constitutes the main body of the volume, and it is presented with grateful recognition of the severe constraints of time under which they were forced to do their research and writing.

Special reports in particular subject areas, the substance of which has largely been incorporated into the volume, were prepared by Dr. John H. Ferguson, President, Better Government Associates, Inc.; Dr. Rosalind L. Branning, Associate Professor of Political Science, University of Pittsburgh; William F. Schulz, Professor of Law, University of Pittsburgh; and Harry P. Begier, Jr., Legal Research Associate of The Preparatory Committee staff. Special appreciation is extended to each of these for important contributions to the final content of this volume, and to Alberta L. Kilmer, my assistant at Temple University, for her very great help with its editing and collation. The work of the staff of Dr. David H. Kurtzman, Director of the Taxation and State Finance section, in the preparation of the material on the local government sections of Article IX is also gratefully acknowledged.

I would be greatly remiss were I not to acknowledge the heavy debt I owe to the countless local government officials with whom I have associated and worked over many years of interest and activity in Pennsylvania local government. From these have come insights and concerns which undoubtedly have helped to shape the frame of reference of this present work, and while the responsibility for it is mine and not theirs, I should hope that the diversity of their views as well as their common concerns are fairly and impartially embraced within the pages that follow.

William G. Willis, *Director*
Local Government Research

Table of Contents

CHAPTER 1

Introduction

Almost fifty years ago, a prominent member of the Commission on Constitutional Amendment and Revision, appointed in 1919 by Governor Sproul, wrote that the constitution of 1874 could be compared "to a suit of clothes, of good quality, of fair pattern, and made in the style of its day, but, after all, threadbare in spots, worn badly here and there, and in brief, quite outgrown."[1]*

The discussion which follows on the pages of this volume will testify that, over the years since the Sproul Commission filed its report and the voters subsequently rejected its recommendation for a constitutional convention, there has been little evidence of any obvious consensus as to whether the constitution of 1874, in respect to the subject of local government, is "quite outgrown." It is a fact that the Sproul Commission felt it necessary to recommend a great amount of "entirely new matter," and the Pennsylvania Commission on Constitutional Revision, popularly known as the Woodside Commission, in its 1959 report, recommended some very basic changes concerning the county government articles, and in respect to the article on cities and boroughs, proposed "what amounts to a complete revision."[2]

But it is also true that very little change of a basic nature has taken place by way of amendments approved by the voter. Certain changes have been made in the matter of local debt limitations, the latest of which was in 1966; a 1945 amendment deleted the prohibition against consecutive terms for the county sheriff; an amendment relating to the consolidation of county and city officers in Philadelphia was approved in 1951; an amendment authorizing the General Assembly to provide for a federated system of government in Allegheny County was adopted in 1928 and superseded by another in 1933; and a 1922 amendment authorized the legislature to grant a limited form of home rule to cities and to provide optional forms of government for both cities and boroughs.

*Notes will be found at the end of each chapter.

Despite these changes, the structure, organization, form and power of Pennsylvania local government, with the rather notable exception of the City of Philadelphia, appears to be very much as contemplated by the provisions of the Constitution of 1874. Whether this is a virtue, with a bow as testimony to the foresight of the framers of the constitution, or an evil unremedied and long overdue for correction, is very much a matter of debate. Both points of view have stong support.

Scope of Revision

When the people of Pennsylvania approved the calling of a constitutional convention in "accordance with and subject to, the limitations and requirements contained in Act 2 of the 1967 General Assembly,"[3] the convention was thereby authorized to make "recommendations to the electorate on the subject of Local Government (now covered by Articles XIII, XIV, XV, and part of Article IX of the Constitution)."

While the Act provides that the convention may make recommendations on the *subject* of Local Government, it appears to define and restrict that subject to the articles enumerated. Any sections or provisions relating to local government not included within the enumerated sections, for example, Article III, Sec. 34, relating to municipal classifications, and Article III, Sec. 7, containing the prohibition against special laws in local government affairs, would therefore seem to be outside the scope of revision.

In respect to the enumerated sections themselves, the Convention apparently has full freedom to proceed with revision on the subject of local government, in any form or manner it chooses. The relevant language of Sec. 7 is, "In dealing with the subject matter as prescribed by this section, the convention may recommend the transfer to another article of any provision contained in those articles, or it may recommend its modification, deletion, repeal, the substitution of an entirely new provision or its continuation without change."

Scope of This Volume

It is the intent of this volume to provide for the Constitutional Convention delegates a set of reference and source materials on the broad "subject of local government." No attempt is made to set forth in any considerable detail the historical background and development of local government in the Commonwealth of Pennsylvania or the present state of the quite extensive body of statutory law by which it is currently governed. It is believed that sufficient historical material is supplied for the understanding of the origin and development of each of the existing sections, and wherever possible and appropriate, interpretative notes are supplied to provide a quick summary of the essential meaning or result of a given provision as developed through litigation or practice.

In order, the chapters of this volume include discussion, reference, and source materials as follows:

Chapter Two describes the organization and structure of Pennsylvania local government as it exists today. The legal setting of local power and the classification of local units are explained; the forms of government and the organization for functional administration are described, as well as shown in graphic form for each of the classes of political subdivisions; the state and local dimensions of the rule of the county are made clear; attention is given to the types and powers of authorities and special districts; the basis and extent of interlocal cooperation are discussed; and some broad generalizations and comparisons are made concerning the form and organization of local government in Pennsylvania in the context of the broad patterns existing in other states.

Chapter Three is a general discussion of those local government issues which seem most frequently to be discussed by writers, organizations, authorities, groups and individuals when considering the subject of constitutional revision. A deliberate attempt is made to present the issues in such a way as to avoid subjective judgment.

The issues outlined are home rule, particularly within the setting of the "residual powers" issue which was raised at several points during the public hearings conducted by the Preparatory Committee; the organization or reorganization of local government, as related both to the number of local units and the question of constitutional cognizance of principles to govern annexation and boundary changes; county government structure and power; the adjustment of government at the local level to area or regional needs; municipal debt limitations; and the question of a single, rather than separate, article treatment for the subject of local government.

Chapter Four is concerned with the alternatives and proposals for revision of the existing local government articles and sections of the Constitution of 1874 embraced within the provisions of the legislative act prescribing the limitations of the Constitutional Convention. The content of each section is cited, and as appropriate and available, the views and opinions of prior Pennsylvania constitutional commissions and of authorities, organizations, and groups are included. For illustrative and ready reference purposes, relevant or comparable provisions of other state constitutions are appended. It is not possible, within the scope of the Preparatory Committee effort, to supply a complete and exhaustive treatment of each of the existing local government sections, but it is believed that Chapter Four is sufficiently comprehensive and detailed to provide the convention delegate with a reasonably adequate basis for analysis and judgment.

Chapter Five is, in one sense, an extension of Chapter Four because the matters discussed therein do relate to possibilities for revision of existing constitutional sections. In another sense, however, Chapter Five deals with matters or issues of local government with which the Constitution of 1874 is not

concerned, or if so, only very indirectly. From this viewpoint, therefore, they might be considered as "new" matters, or at the very least, as matters not clearly explicit in the sum and total of alternatives and proposals presented in Chapter Four.

The matters are discussed under the headings of Interlocal Relations and Consolidation and Annexation. As objectively as possible, the problem in each instance is stated, the Pennsylvania setting is reviewed, constitutional approaches in other states are examined, and proposals and alternatives for consideration by the Constitutional Convention are presented, without recommendation or endorsement by the Preparatory Committee, solely as a summary of views of authorities, local government organizations, other constitutional commissions, and interested groups.

Overview

The succeeding chapters neither advocate nor oppose any particular view or proposal for revision of the articles or sections of the Constitution of 1874 relating to the "subject of local government," but a full range of views and proposals is presented. Nor is it within the province of the Preparatory Committee to urge the adoption of any overriding principle as the Constitutional Convention proceeds with considerations for constitutional revision. Whether the Convention should proceed in the direction of constitutional simplicity and flexibility, or in the direction of even greater detail and specification than existing provisions now include, is a fundamental question for the delegates to decide. And whether the Convention should proceed to consider the "subject of local government" and make its recommendations thereon, within a unified concept or theory of government at the local level, or to consider it within the more traditional framework of separate and loosely coordinated approaches to the several classes and types of local units, is an equally basic question. The chapters which follow make no attempt to answer questions such as these.

Notes to Chapter 1

1. Francis Newton Thorpe, "The Pennsylvania Papers," published by the Pittsburgh Sun, 1921, p. 3
2. Report of the Commission on Constitutional Revision, Harrisburg, 1959, p. 54
3. Act No. 2 of The 1967 General Assembly, approved March 15, 1967

CHAPTER 2

Structure and Organization of Local Government in Pennsylvania

This chapter describes the structure and organization of the several classes of Pennsylvania's local governments: counties, cities, boroughs, townships, and special districts, such as municipal authorities. Particular attention is given to their legal setting, their governmental forms and powers, and the nature of interlocal cooperation in the Commonwealth. There are also summary statements comparing Pennsylvania's local governments with those in other states. This capsule presentation does not discuss in detail the administrative organization of the several classes of governmental units; however, the table and charts on pages 16 to 27 and 32-33 provide information as to the differences existing among the State's political subdivisions.

THE LEGAL SETTING

General

It is an established point of municipal law that local governments are creatures of the state and have no inherent powers apart from those granted by the state. This doctrine finds its roots in what has become known as Dillon's Rule—a decision handed down by Justice Dillon in 1868 (*City of Clinton v. Cedar Rapids and Missouri River R. R. Co.*, 24 Iowa 455) which described municipal governments as "mere tenants at the will of the legislature." Under Dillon's Rule, it has been established that a municipal corporation can possess and exercise only (1) those powers granted in expressed words, (2) those necessarily or fairly implied in, or incident to, powers expressly granted and (3) those essential to the accomplishment of declared objectives and purposes of the corporation—not simply convenient, but indispensable.[1]

Dillon's Rule finds its basis in Pennsylvania law in *Philadelphia v. Fox et al.* In this case (64 Pa. 169, 180 (1870)) the State's Supreme Court said:

Local government is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or act of creation being in no sense a contract with the State—and therefore fully subject to the control of the legislature, who may enlarge or diminish its territorial functions, may change or modify its internal arrangement, or destroy its very existence with the mere breath of arbitrary discretion.

This prevailing doctrine of local government law encourages those who must worry about the scope of municipal power to look for an express grant of authority before taking action. It leaves to the courts the task of determining the scope of municipal power when a question arises as to whether or not a local government may properly engage in a certain action. Pennsylvania Courts, in looking to questions of municipal powers, almost invariably repeat the language of *Fox v. Philadelphia* and Dillon's Rule, and for the most part, have pursued a line of strict construction, in favor of the Commonwealth.[2]

Local Government Law

Local government law is hardly as singular as its designation would seem to imply. Much of the legislation affecting cities of the third class, boroughs, and townships of the first and second classes can be found in appropriate codes—compact and quite detailed compilations of much of the legislation relating to the substantive powers and procedural requirements of each of these subdivisions. But in addition to code law, there is an extensive body of general law that applies to local government. Powers and duties with respect to real property assessment, intergovernmental cooperation, municipal borrowing, local non-property taxation, real estate tax collection, and municipal employees retirement are but a few examples of grants of legislative authority and applications of legislative direction which are not embodied in the local government codes. Such non-code statutes sometimes have uniform application throughout the state, regardless of class of political subdivision; others may apply to only a specific local government classification; and some may be applicable only to subdivisions in counties of a certain class.

Additional legislative authority or prescriptions may be found in special acts of the legislature passed prior to the present Constitution, in the Constitution itself, and even in the codes of other classes of political subdivisions.

Judicial decisions handed down as a result of litigation of any piece of local government legislation constitute still another important source of local government law.

Despite an outwardly complex and confusing appearance, a substantial degree of substantive uniformity now exists among the several classes of local government in the state. The authority to engage in a municipal function or perform a local government service differs little between a city of the second class, on the one hand, and a township of the second class on the other. (Phila-

delphia, operating on a "home rule" charter is, of course, in a special category.) There are, however, certain significant procedural differences among the several classes of political subdivisions; in some classes performance may be mandatory, while in others its application is left to the discretion of the governing body. Thus, for example, in townships of the second class, police officers may be appointed without examination, while in other classes of local government, the testing of applicants is required.

Classification of Local Governments

Article III, Section 20 of the Constitution authorizes the legislature to classify cities, boroughs, and townships according to population. (One town—Bloomsburg in Columbia County—created by local law prior to the present Constitution, is still governed under its original charter, remaining as the lone remnant of the "special legislation" practices of a by-gone era.)

Cities: Four classifications have been established by the General Assembly:

First Class	Over 1,000,000 (Philadelphia)
Second Class	500,000 to 1,000,000 (Pittsburgh)
Second Class-A	135,100 to 500,000 (Scranton)
Third Class	Under 135,000 (all others - 48)

Article XV, Section 1 of the Constitution provides that whenever a township or borough meets the minimum population requirement of 10,000, it may be chartered as a city when a majority of the electors vote in favor of incorporation.

Because population is the basis for change in the classification of a city, legal provision is made only for the incorporation of cities of the third class. Once incorporated, changes in city classification—either upward or downward—may take place but are not entirely automatic. There is no provision for the loss of city status by any city of the third class which falls below the minimum population established for its incorporation. Thus cities of the third class range in population from 7,700 in Corry to 138,000 in Erie. Additionally, a decrease in population in a city of the first, second, or second class-A below the minimum prescribed for its present classification, or an increase in population in any city which would make it eligible for a classification of a higher order, does not immediately produce a change in status. The law provides that such changes cannot take effect until a ten-year period has elapsed from the time the Governor certifies that in each of the preceding two United States decennial censuses the population has either increased or decreased to warrant a new classification for the affected city.

Boroughs: The legislature has not divided boroughs into classes and at the present time this unit of municipal government exists as a single classification. There are about 950 boroughs presently. Since no minimum population is necessary for their incorporation, they exhibit wide variations in the numbers of persons residing in them, ranging from as few as 13 people in Seven Springs to approximately 39,000 in Norristown.

Townships: Two classes have been established by the General Assembly. The creation of townships of the first class requires a population of at least 300

persons per square mile. All townships not eligible for, or not choosing to become, townships of the first class, are classified as townships of the second class.

Townships do not automatically move from second class upon reaching the minimum population for a first class township, nor do townships of the first class revert in classification in the event of a loss of population below the stipulated minimum. In either event the change is optional, subject to a referendum of the voters. At the present time, there are 89 townships of the first class and 1,466 townships of the second class. Variations in population of the former range from 500 in South Versailles to 93,000 in Upper Darby; and, in the townships of the second class, from four in Barclay to 30,000 in Hempfield.

Table 1 shows the number of units within several population ranges, by class of local government.

TABLE 1. PENNSYLVANIA CITIES, BOROUGHS AND TOWNSHIPS—NUMBER AND CLASSIFICATION BY POPULATION RANGES[3]

Population	*Classification*						
	1st Cl. City	*2nd Cl. City*	*2nd Cl. -A City*	*3rd Cl. City*	*Boros.*	*1st. Cl. Twp.*	*2nd Cl. Twp.*
1 million or more	1						
500,000 to 999,999		1					
100,000 to 499,999			1	2			
50,000 to 99,999				9		6	
25,000 to 49,999				7	5	5	4
10,000 to 24,999				25	50	33	19
5,000 to 9,999				5	132	20	103
2,500 to 4,999					140	19	216
1,000 to 2,499					244	4	534
Under 999					381	2	590
TOTAL	1	1	1	48	952	89	1466

Home Rule

Article XV, Section 1, as amended, of the Constitution of 1874 provides that cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government subject to such restrictions and limitations as may be imposed by the legislature. This same section also gives to the legislature the right to enact laws affecting the organization and government of cities and boroughs which shall become effective only when approved by the majority of the electors.

Technically speaking, municipal "home rule" is defined as the power granted to municipal corporations to frame, adopt, and amend a charter for their government, and to exercise all powers of local self-government, subject to the Constitution and general laws of the State. With this definition in

mind, only Philadelphia, among Pennsylvania municipalities, may be said to operate under a "home rule" charter, having been granted the authority in 1949. The charter itself was adopted in 1951.

In 1957, cities of the third class were granted the right, upon approval of their electorates, to change from the legislatively mandated commission form to either a strong mayor-council or council-manager form of government. Table 2 indicates the extent to which municipalities within the classification have taken action under the Optional Charter Act. This grant of power to third class cities is perhaps best described as modified "home rule." It does not, like the Philadelphia charter, confer broad substantive powers of local government upon third class cities, but rather is limited to matters of governmental structure and administrative organization.

TABLE 2. ACTION UNDER THE OPTIONAL CHARTER ACT FOR PENNSYLVANIA THIRD CLASS CITIES[4]

Year Charter Commission Elected	*City*	*Recommendation*	*Disposition*
1957	Butler	Council-Manager	Rejected
1957	Johnstown	Council-Manager	Rejected
1957	Pottsville	Council-Manager	Rejected
1958	Greensburg	No Change	
1958	Altoona	Council-Manager	Rejected
1958	New Castle	Council-Manager	Rejected
1958	Bethlehem	Mayor-Council	Adopted
1958	Erie	Mayor-Council	Adopted
1958	Sharon	Mayor-Council	Adopted
1958	York	Mayor-Council	Adopted
1959	Coatesville	No action	
1961	Bradford	Council-Manager	Adopted
1961	Easton	Council-Manager	Rejected
1961	Reading*	Council-Manager	Rejected
1961	Titusville	Council-Manager	Adopted
1962	Lancaster	Mayor-Council	Adopted
1962	Pottsville**	No Change	
1963	Altoona**	Council-Manager	Rejected
1963	Williamsport	Council-Manager	Rejected
1964	Greensburg**	Council-Manager	Rejected
1964	Meadville	Council-Manager	Adopted
1964	New Castle	Mayor-Council	Adopted
1965	Lebanon	Mayor-Council	Rejected
1965	Johnstown**	Mayor-Council	Rejected
1965	Wilkes-Barre	Council-Manager	Adopted
1965	Hazleton	Council-Manager	Rejected
1967	Allentown	Conducting Study	

*A Supreme Court decision reversed the original vote favoring the Council-Manager Plan. (410 Pa. 62, *Reading Election Recount Case*)
**Second Commission

A degree of "home rule" with regard to forms of government is also possessed by boroughs, and townships of both the first and second classes. The Legislature has provided that these classes of local governments may, by ordinance, establish a council-manager plan and give an appointed manager such non-legislative and non-judicial powers as the governing body deems appropriate. At the present time, as Table 3 indicates, there are 150 boroughs and townships functioning under this form of local government.

TABLE 3. BOROUGHS AND TOWNSHIPS WITH COUNCIL-MANAGER GOVERNMENT[5]

Population	*Boroughs*	*Townships of the First Class*	*Townships of the Second Class*
50,000 and over		4	
40,000 to 49,999			
30,000 to 39,999	2	2	
20,000 to 29,999	6	3	1
15,000 to 19,999	2	3	2
10,000 to 14,999	14	7	6
5,000 to 9,999	46	8	11
2,500 to 4,999	20	1	4
Under 2,500	7		
Total	97	28	24

Additionally, there are certain features in Pennsylvania law which provide all local governments with a semblance of home rule. Included in the laws relating to local government are many optional provisions, permissive in character, which political subdivisions may accept or reject. These grants of authorization are left to the discretion of the governing body to apply or to ignore as it deems appropriate.

FORMS OF PENNSYLVANIA LOCAL GOVERNMENT

Generally speaking, there are four forms of local government in the United States—weak mayor-council, a strong mayor-council form, the council-manager form of government and the commission form. All four are to be found in Pennsylvania:

Weak Mayor-Council: The weak mayor-council plan is a product of "Jacksonian Democracy", a reflection of a time when people were generally hesitant to confer powers of government upon a single executive. The executive officer—the mayor—is not weak because he lacks policy-making power or political power. He is weak because he has few, if any, administrative responsibilities. The primary authority in the weak-mayor system is the council

which exercises all of the legislative and most of the administrative and executive power.

The weak mayor-council plan is the mandated governmental structure for Pennsylvania's more than 950 boroughs, unless these political sub-divisions exercise their option of adopting the council-manager form of local government.

Strong Mayor-Council: This form of local government basically is a Twentieth Century development in the United States. The differences between the weak and strong mayor-council plans are ones of degrees. The legal position of mayor under the latter plan is more powerful since, in addition to various policy-making responsibilities, the mayor is the chief executive officer of the municipality and the director of its administration in fact as well as name. The mayor appoints most major department heads, prepares the budget and is responsible for the implementation of the jurisdiction's service program.

In Pennsylvania, the strong mayor-council plan exists in the Home Rule Charter City of Philadelphia and is mandated by legislative act for the State's cities of the second class and second class-A. By exercising the authority granted them under the Optional Charter Act of 1957, cities of the third class may adopt the plan. To date, six cities within this class are functioning with a strong mayor-council plan.

Council-Manager: This form of government is another Twentieth Century development in this country; the first council-manager plan being adopted in 1908. This governmental structure first appeared in Pennsylvania in 1914. The outstanding characteristic of the council-manager plan is the appointment, by council, of a professional chief administrative officer, the manager. The governing body functions as the primary policy-making unit of the jurisdiction, and the manager, appointed by council without tenure, is responsible for the implementation of service programs, fiscal planning and control, and the execution of other councilmanic policies.

The adoption of a council-manager form of government is optional for Pennsylvania's cities of the third class, boroughs, townships of the first class and townships of the second class. The latter three classes of political subdivisions may adopt the council-manager plan by ordinance. This councilmanic action establishes the position of manager and sets forth his powers and duties, which, according to the respective codes, must be of a non-judicial and non-legislative nature. Because the enabling legal provisions do not detail the manager's duties and responsibilities, variations exist as to the nature of this position in borough and township governments. In third class cities, the council-manager plan is adopted by the electorate voting upon recommendations developed by a charter commission established pursuant to the 1957 Optional Charter Act. The powers and duties to be exercised by the council and manager are set forth in this law.

Commission: This form of local government was first adopted in 1903 in the United States, although versions or modifications of the commission plan existed prior to that time. Its principal characteristic is that the legislative, executive and administrative functions are combined in the elected governing body or commission. Each commissioner heads an administrative department and collectively the commissioners function as the legislative body. Although there is a popularly elected mayor, he does not possess separate executive authority as, for example, does a mayor under the mayor-council plan. The mayor in the commission form serves as a commissioner, but generally possesses no greater authority than the other council members.

The commission plan is the mandated governmental structure for Pennsylvania cities of the third class which have not exercised the other optional plans provided for by the Optional Charter Act of 1957. At present 38 of the 48 third class cities continue to operate with the commission form of local government.

Because of the absence of a separately elected mayor with some degree of executive powers, Pennsylvania's townships, which have not adopted the council-manager plan, are considered as having commission government or a modified commission plan, as otherwise mandated by the respective township codes. Executive, administrative and legislative authority, for the most part, is vested in the governing body: in townships of the first class, the Board of Commissioners; and in townships of the second class, the Board of Supervisors. There is no mayor in townships, the required ceremonial duties of this office are performed by the presiding officer of the board.

The commission plan, or a variation thereof, is the most dominant form of local government in the State. More than 2,500 of its local governmental units operate under the plan.

THE EXECUTIVE, ADMINISTRATIVE AND LEGISLATIVE FUNCTIONS IN PENNSYLVANIA LOCAL GOVERNMENT

As indicated in the discussion of governmental forms, the structure of certain local governmental units provides for the vesting of executive, administrative and legislative authority primarily in a popularly elected governing body. In others, these powers may be divided or shared between a popularly elected (mayor) or appointed (manager) chief executive, and the elected council or board.

Philadelphia, Pittsburgh, Scranton, and those third class cities under the mayor-council option have a popularly elected mayor who serves as the city's chief executive officer. In each case, the mayor is given substantial appointive and removal powers and is responsible for day to day operations of the numerous service departments. The mayor of the City of Philadelphia has particularly strong appointive power in that councilmanic approval is not

required for any of his appointments except that of the city solicitor. The councils in the other cities must approve major appointments.

In each of the cities, the executive position of the mayor is strengthened by the fact that he does have a veto over councilmanic action. His veto may be overridden by two-thirds vote of council.

Fiscal authority in the mayor-council cities is divided among the mayor, the council and controller. Responsibility for budget preparation and program implementation is vested in the mayor; council determines the revenue structure and rates, and authorizes and approves expenditures and contracts. The controller maintains the city's financial records and sees that funds are legally expended.

The Philadelphia home rule charter also has provided the mayor with the opportunity to free himself of the detailed work usually facing an executive by allowing for the appointment of three principal assistants: managing director, director of finance, and city representative. The managing director supervises the city's service departments, the director of finance is the chief fiscal officer and assists in the preparation and control of the budget, and the city representative functions in a ceremonial capacity and serves as the chief public relations officer.

Under the mayor-council option for third class cities, the council may establish a department of administration headed by a business administrator, appointed by the mayor, to assist in preparing the budget, administering a centralized purchasing system and performing any other duties assigned by council or the mayor.

No position comparable to a managing director or a business administrator is provided for the City of Pittsburgh or the City of Scranton, although, in the case of Pittsburgh, the mayor's executive secretary may serve in the capacity of an administrative assistant.

Pennsylvania boroughs and third class cities with the commission form of government also have a separately elected chief executive (the mayor). The mayor of third class cities serves as a fifth member of council and heads the Department of Public Affairs. The code mandates that he function in this capacity. He may make appointments within his department and to certain other city posts. The mayor has no veto power, and little other power apart from that of any other member of council. His administrative control is largely confined to the Department of Public Affairs.

The borough mayor has no power of appointment and removal. His major exercise of authority rests with his control over the operation of the police department. The mayor has no other administrative responsibilities. He may veto councilmanic ordinances but this veto may be overridden by a two-thirds vote of council.

The position of mayor is not permitted in either class of township; whatever ceremonial functions are necessary are performed by the governing board chairman.

Third class cities, boroughs and townships selecting to operate under the council-manager plan of government delegate to an appointed manager certain executive and administrative functions. In third class cities, the Optional Charter Act provides that the manager is to serve as the chief executive officer. The Act also sets forth the manager's fiscal, supervisory, and appointive powers. In boroughs and townships operating with the council-manager plan, the extent of formal executive and administrative authority given to the manager is provided by local ordinance. Under the borough and township codes, the council or board may assign to a manager any non-legislative and non-judicial functions, thus allowing for discretion in the duties which the governing body vests in this appointed official.

In Philadelphia, Pittsburgh, Scranton, and third class cities under the mayor-council or manager options, the legislative function is separate and vested in a popularly elected council. Its primary responsibilities are the enactment of ordinances and resolutions, approving fiscal and other programs and plans, levying taxes and other imposts, investigating activities in the executive branch and defining the city's administrative structure, if permitted by law. The council has the power to override a veto of the mayor by a vote of two-thirds of the total membership, and in Pittsburgh, Scranton, and mayor-council third class cities councilmanic approval is required for most major appointments made by the mayor.

In third class cities with the commission form, and in boroughs and townships, (except where the council-manager plan has been put into effect) the legislative body functions in a combined executive, administrative and legislative capacity. In city commission governments, the council has the usual legislative prerogatives of a governing body, but in addition its members are responsible for the operation of city departments. The directorships of these departments (except the one mandated for the mayor) are allocated by council among its other four members.

To facilitate its control over administrative matters, a borough council and a township board of commissioners or board of supervisors may organize into committees, such as public safety, finance, purchasing, and public works. Each committee supervises those functions of government with which it is concerned.

In those jurisdictions where the executive, administrative and legislative functions are combined, the governing body, as a whole, makes all appointments--solicitor, clerk, engineer, etc. It also determines which of the many optional functions permitted by statute will be performed. Fiscal powers reside primarily with the governing body.

All Pennsylvania political jurisdictions have various elected officials, other than the executive officers and governing board members, who play a role in the government's operations. For the most part, these elected officials carry out a fiscal function such as tax collecting, auditing, or custody of public

funds. In addition, all political subdivisions have the authority to appoint a variety of other officials and may establish a number of lay citizen boards to assist in the development or the implementation of public policies. For example the adoption of a zoning ordinance necessitates the creation of a quasi-judicial board to interpret land use regulations, and the appointment of an officer to enforce the ordinance. Personnel administration, as it affects the employment, promotion and retention of certain classes of public employees, generally involves the appointment of a civil service commission. It should also be recognized that the courts are also granted certain appointing powers. For instance, in the City of Philadelphia all but the ex-officio members of such agencies as the Board of Revision of Taxes, Fairmount Park Commission, and the Board of Prison Inspectors are appointed by the Court of Common Pleas. In other classes of jurisdictions, such as boroughs and townships, the courts are authorized to fill vacancies on the governing body, if it cannot act.

Table 4 and Charts 1 to 9 provide additional information as to the organization of Pennsylvania's cities, boroughs, and townships.

The basic distinction among Pennsylvania's cities, boroughs, and townships, as classes of local units, is one of governmental form and not substantive powers. Admittedly, form has a relationship to the way in which a governmental unit exercises its substantive powers, but in Pennsylvania all political subdivisions have been authorized by the General Assembly to provide basically similar services. The extent to which these powers are exercised is largely dependent upon a jurisdiction's fiscal resources, citizen demands, recognized needs, and community values.

This "uniformity" of authority among the State's several classes of local governments is a recent development in Pennsylvania, occurring principally within the past two decades. Pennsylvania's pattern of granting extensive substantive powers to *all* local units (including unincorporated areas) is one which generally has not been adopted by other states.

Although there is uniformity of authority among the State's jurisdictions, laws permitting or mandating various service programs occasionally differ as to the ways and means such programs are to be initiated and implemented. For instance, in townships of the second class the auditors perform a limited legislative role (their approval, for example, is required before the governing body may undertake certain public services).

An indication of the nature of local service programs and the extent to which there is a commonality of authority is shown in Table 5. This table gives per capita expenditures by class and function. A multiplicity of factors accounts for the wide divergence in per capita expenditures among the several classes of jurisdictions: quality and quantity of services, resources, recognized needs, performance of functions by other governments or institutions, etc. No evaluation of the data will be made.

TABLE 4. COMPARATIVE DATA PENNSYLVANIA MUNICIPAL GOVERNMENTS

Classification	Mandated Form of Government	Legislative Body			Chief Executive			Other Elected Officers	
		Number	How Elected	Term	Title	App./Elected	Term	Office	Term
Counties	Commission	3	At large	4 years Concurrent	None			See Section on County Government	
First Class Cities Philadelphia (under Home Rule Charter)	Strong Mayor-Council	17 Councilmen	10 by district; 7 at large (Minority Representation)	4 years Concurrent	Mayor	Elected	4 years	Controller Former County and Constitutional Offices	 4 years
Second Class Cities (Pittsburgh)	Strong Mayor-Council	9 (5 plus one for every 75,000 pop. over 200,000, up to 500,000)	At large	4 years overlapping	Mayor	Elected	4 years	Controller	4 years
Second Class A (Scranton)	Strong Mayor-Council	5 Councilmen	At large	4 years overlapping	Mayor	Elected	4 years	Controller Collector of Taxes	4 years 4 years
Third Class Cities (Optional Charter Act)	Commission	4 Councilmen	At large	4 years overlapping	Mayor	Elected	Serves 4 yrs. as 5th member of Council	Controller Treasurer	4 years 4 years
	Strong Mayor-Council	5, 7, or 9 Councilmen	At large	4 years overlapping	Mayor	Elected	4 years	Controller Treasurer Assessor (in some 4th–8th Class Counties)	4 years 4 years
	Council-Manager	5, 7, or 9 Councilmen	At large	4 years overlapping	Manager	Appointed	at pleasure of Council	Controller Treasurer	4 years 4 years
Boroughs	Weak Mayor-Council (May elect by ordinance to operate under a Council-Manager Form)	7 Councilmen (3 or 5 with Court approval if under 1,000 population or 1 or 2 from each ward if by ward. Maximum of 13 wards.	At large or by wards.	4 years overlapping	Mayor	Elected	4 years	Tax Collector 3 Auditors or Controller (or appointment of professionally trained auditor in place of either) Assessor (in some 4th–8th Class Counties)	4 years 6 years overlapping 4 years (Controller) 4 years
First Class Townships	Modified Commission. (May elect by ordinance to operate under a Council-Manager Form.)	Board of Commissioners Minimum of 5	At large or by ward or combination if divided into less than 5 wards. Maximum of 15 wards.	4 years overlapping	None			Treasurer (serves as Tax Collector) 3 Auditors *or* Controller (option of a court-appointed professional auditor in place of either) Assessor and Assistant (in some 4th–8th Class Counties)	4 years 6 years overlapping 4 years (Controller) 4 years
Second Class Townships	Commission. (May elect by ordinance to operate under a Council-Manager form.)	Board of Supervisors—3 (if over 10,000 pop. may increase to 5 with Court approval.	At large	6 years overlapping	None			Tax Collector 3 Auditors Assessor in some 4th–8th Class Counties	4 years 6 years overlapping 4 years

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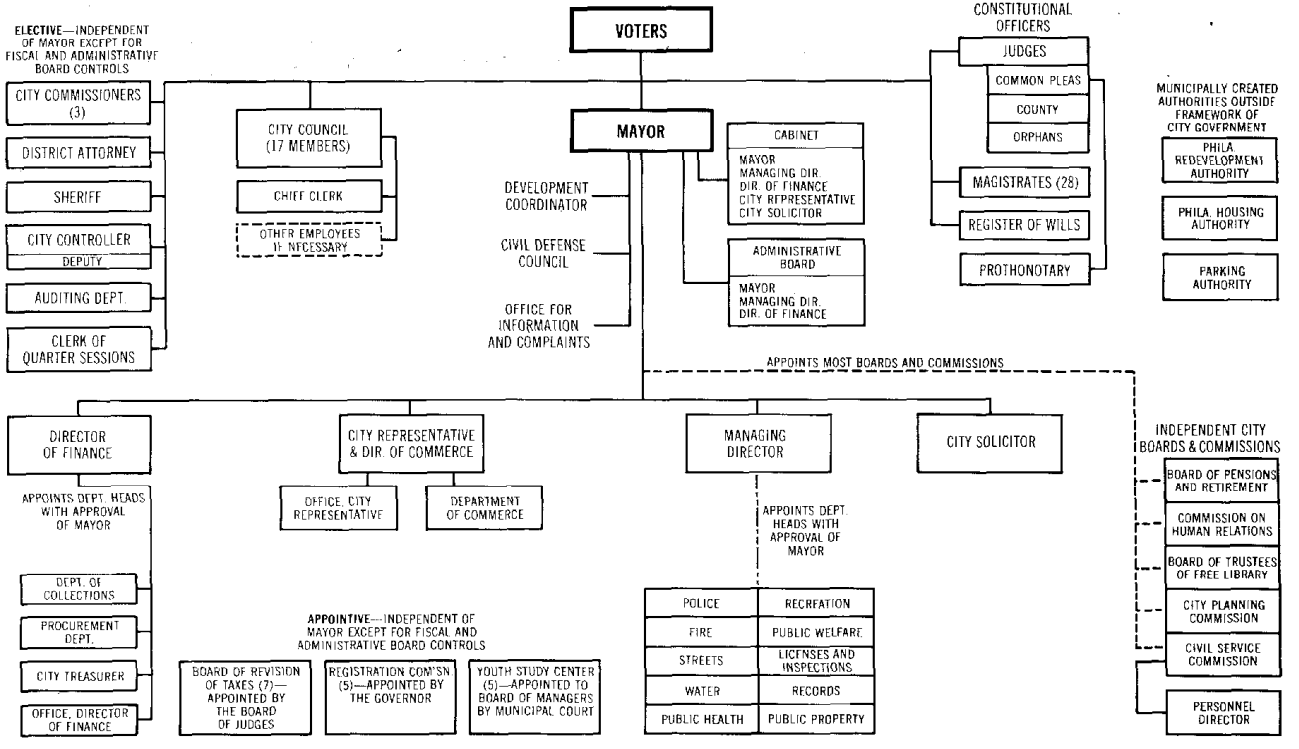
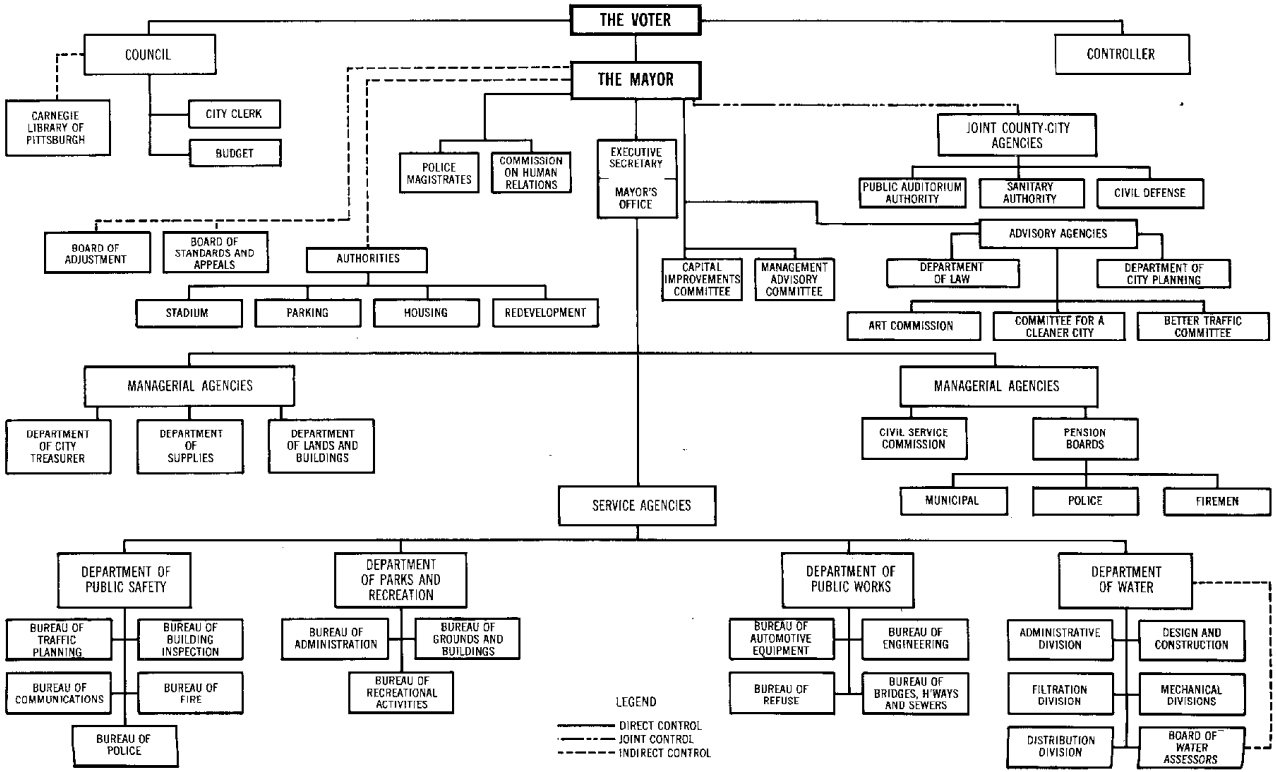
TABLE 5. PER CAPITA EXPENDITURES FOR SELECTED SERVICE AREAS BY PENNSYLVANIA LOCAL GOVERNMENTAL UNITS[6]

	Sanitary Sewers and Sewage Treatment	*Refuse Collection & Disposal*	*Health Service*	*Police*	*Fire*	*Protective Inspection*	*Urban Renewal*	*Streets and Highways*	*Libraries*	*Parks and Recreation*
1st Class City	$1.597	$8.320	$18.883	$27.019	$ 9.386	$1.680	$2.013	$12.959	$3.023	$6.417
2nd Class City	1.089	7.664		17.180	11.432	2.896	6.558	12.520	3.209	6.266
2nd Class A City		3.166	0.506	7.934	9.884	0.199	1.961	6.098	1.175	1.535
3rd Class Cities	5.223	2.544	0.583	8.831	6.354	0.448	0.618	8.420	0.525	2.679
Boroughs	5.314	2.141	0.164	5.918	1.711	0.144	0.021	8.071	0.347	0.918
1st Class Twps.	4.034	2.713	0.308	7.176	1.567	0.452	0.001	7.706	0.487	1.361
2nd Class Twps.	0.806	0.186	0.037	1.370	0.637	0.061	0.002	8.104	0.052	0.100

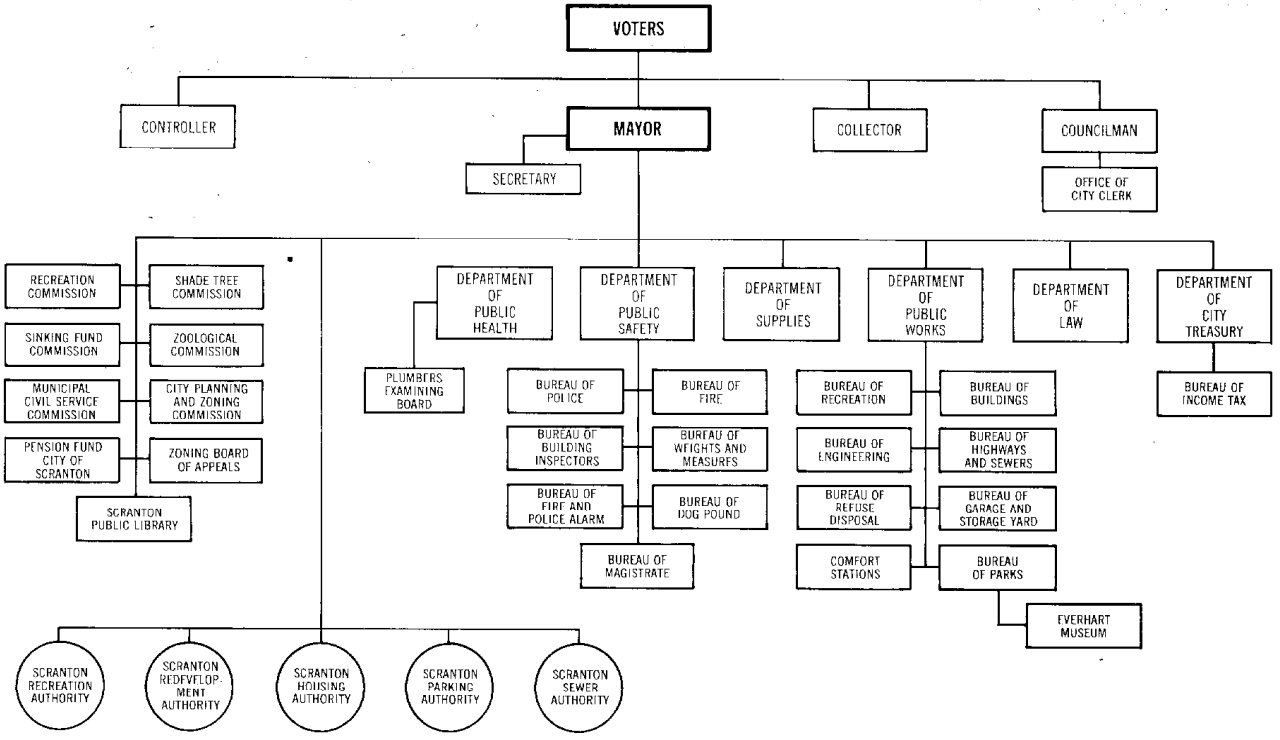
ORGANIZATION OF THE CITY OF PHILADELPHIA



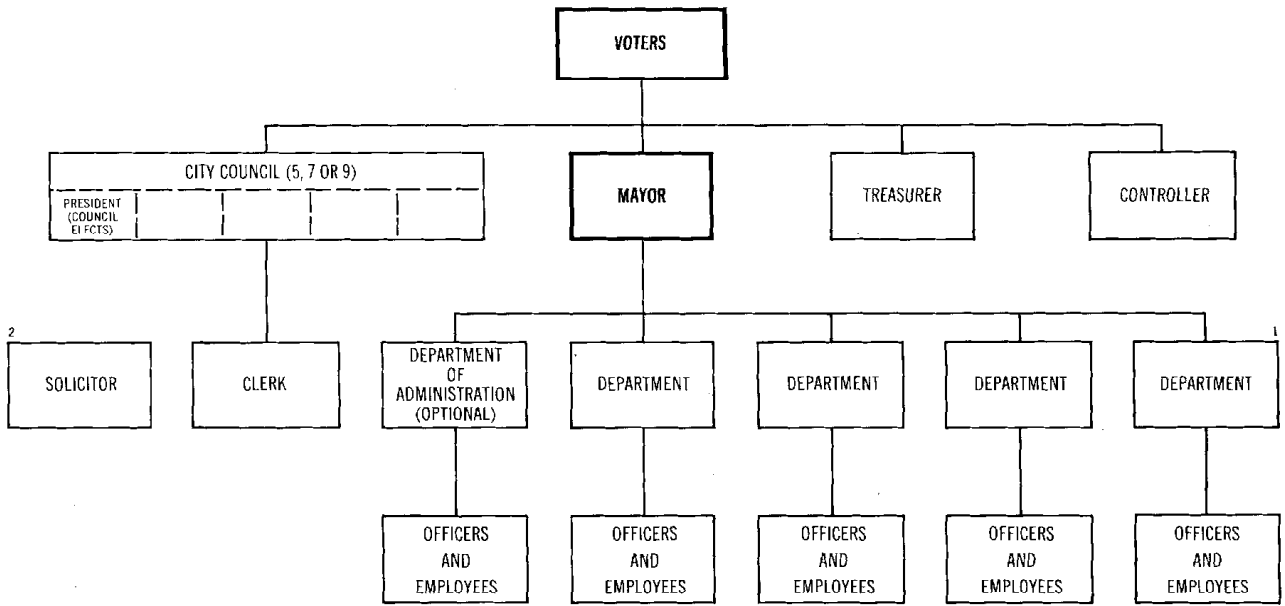
ORGANIZATION OF THE CITY OF PITTSBURGH



ORGANIZATION OF THE CITY OF SCRANTON

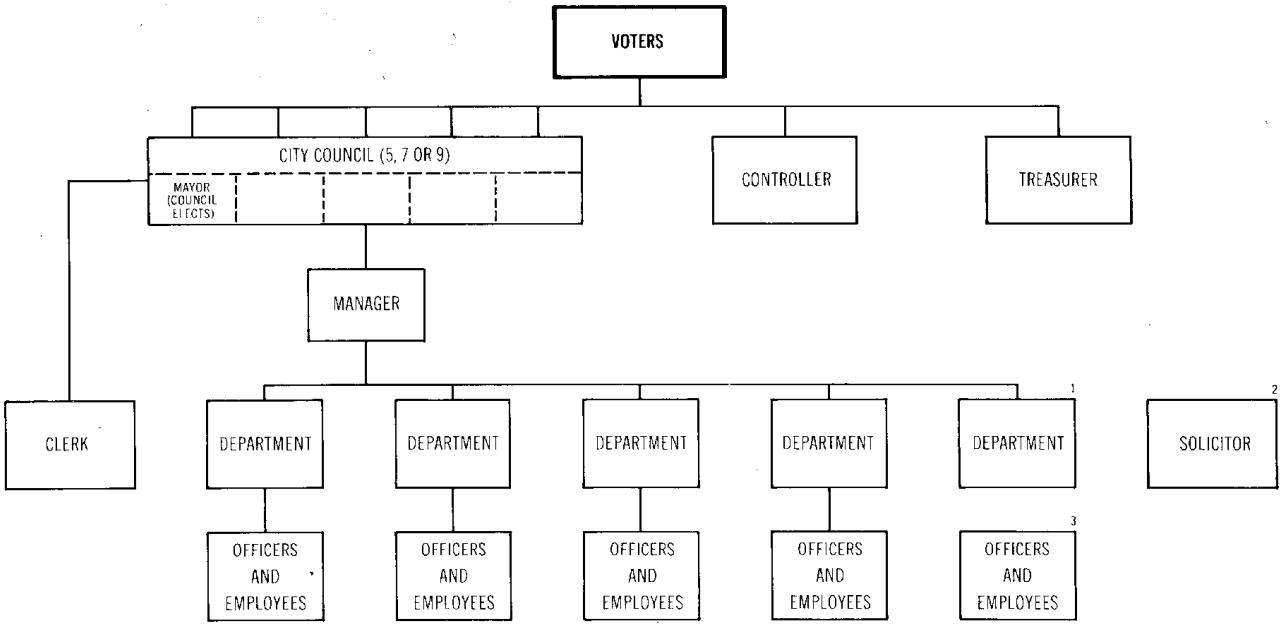


TYPICAL ORGANIZATION OF PENNSYLVANIA THIRD CLASS CITIES—MAYOR-COUNCIL OPTION



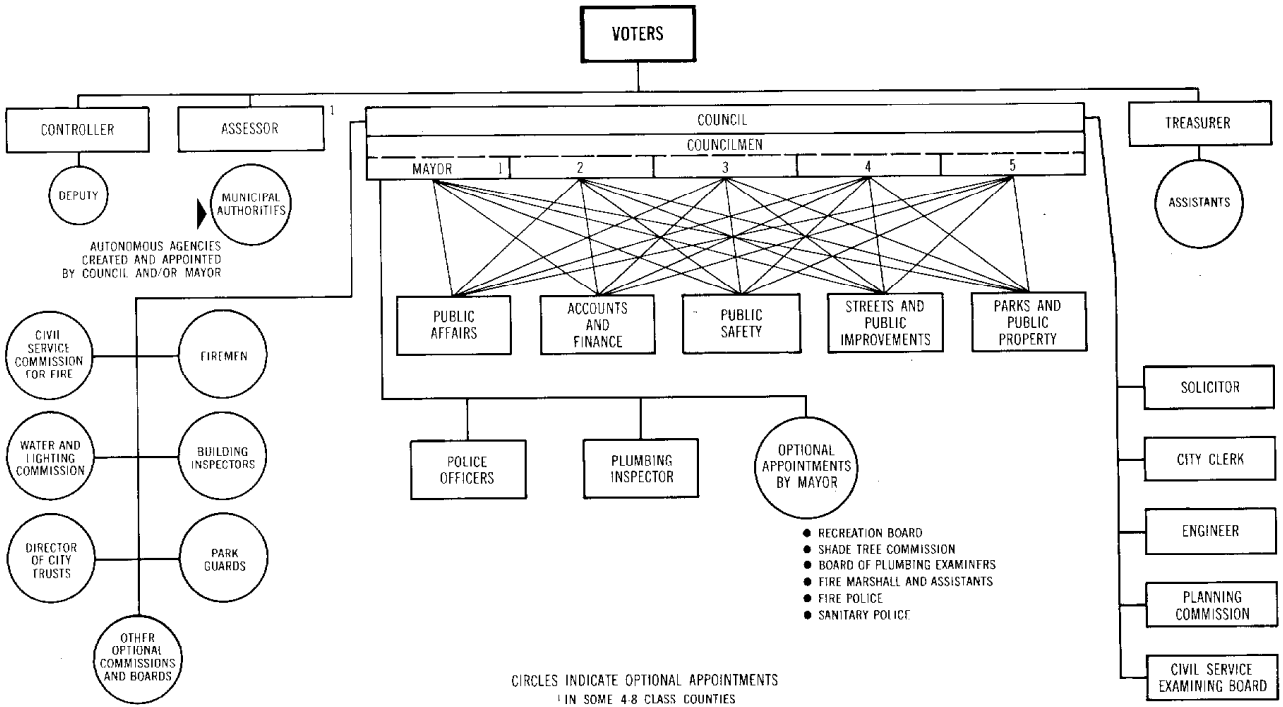
[1] DEPARTMENTS ARE CREATED BY COUNCIL AND MAY TOTAL NINE.
[2] THE SOLICITOR'S MANNER OF APPOINTMENT IS DETERMINED BY COUNCIL.

TYPICAL ORGANIZATION OF PENNSYLVANIA THIRD CLASS CITIES—COUNCIL-MANAGER OPTION

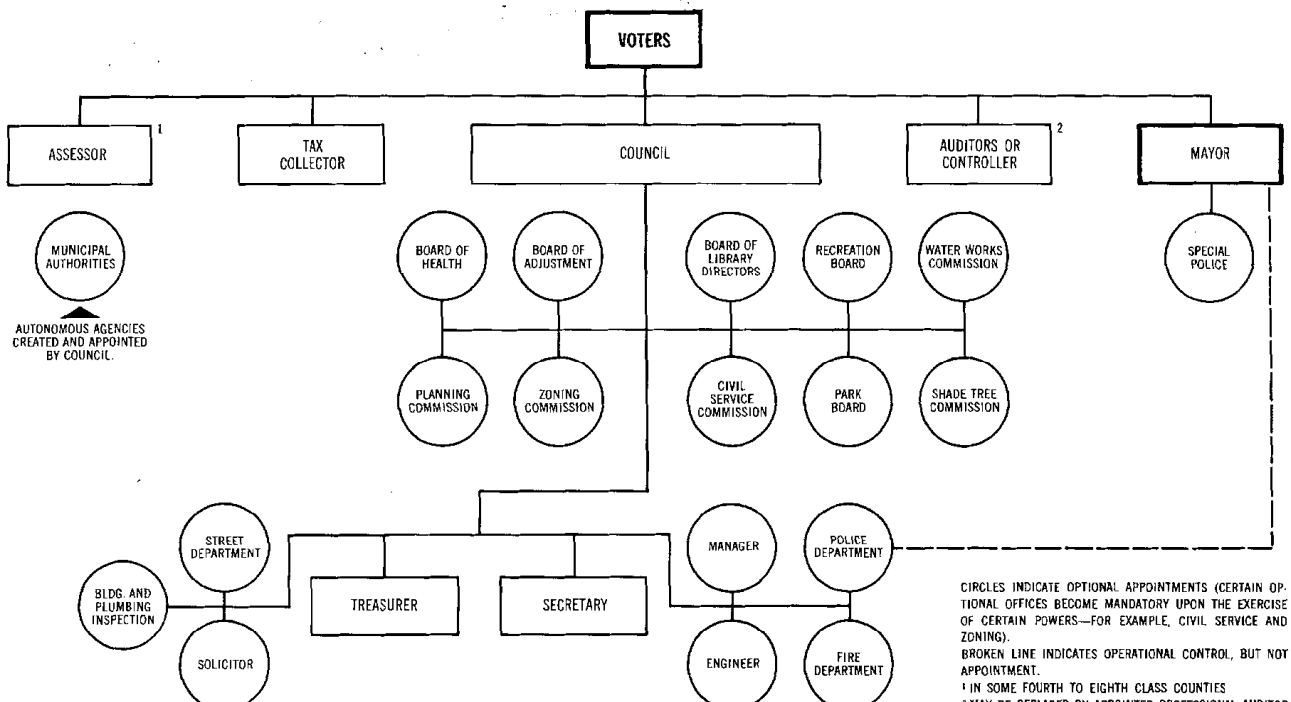


[1] DEPARTMENTS ARE CREATED BY COUNCIL AND MAY TOTAL NINE.
[2] THE SOLICITOR'S MANNER OF APPOINTMENT IS DETERMINED BY COUNCIL.
[3] THE AUTHORITY TO APPOINT SUBORDINATES AND EMPLOYEES RESTS WITH THE MANAGER, BUT HE MAY DELEGATE THIS POWER TO RESPECTIVE DEPARTMENT HEADS.

TYPICAL ORGANIZATION OF PENNSYLVANIA THIRD CLASS CITY
COMMISSION FORM OF GOVERNMENT



TYPICAL ORGANIZATION OF PENNSYLVANIA BOROUGH GOVERNMENT



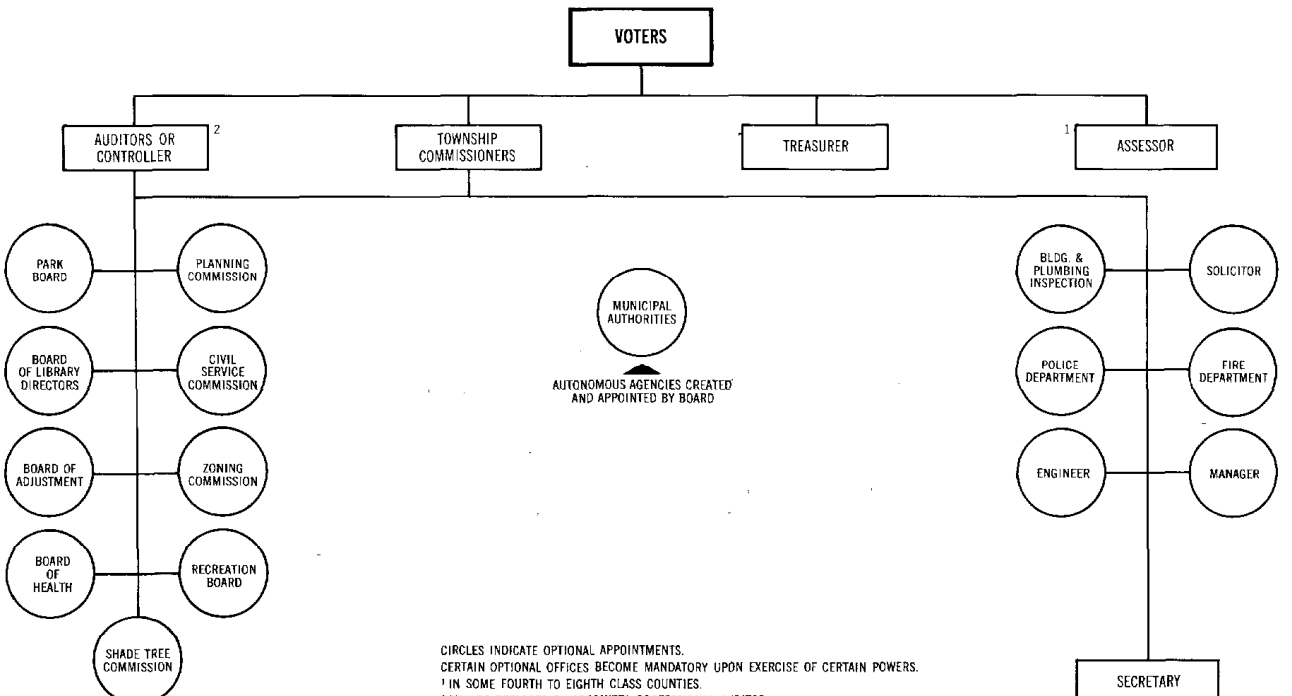
CIRCLES INDICATE OPTIONAL APPOINTMENTS (CERTAIN OPTIONAL OFFICES BECOME MANDATORY UPON THE EXERCISE OF CERTAIN POWERS—FOR EXAMPLE, CIVIL SERVICE AND ZONING).

BROKEN LINE INDICATES OPERATIONAL CONTROL, BUT NOT APPOINTMENT.

[1] IN SOME FOURTH TO EIGHTH CLASS COUNTIES

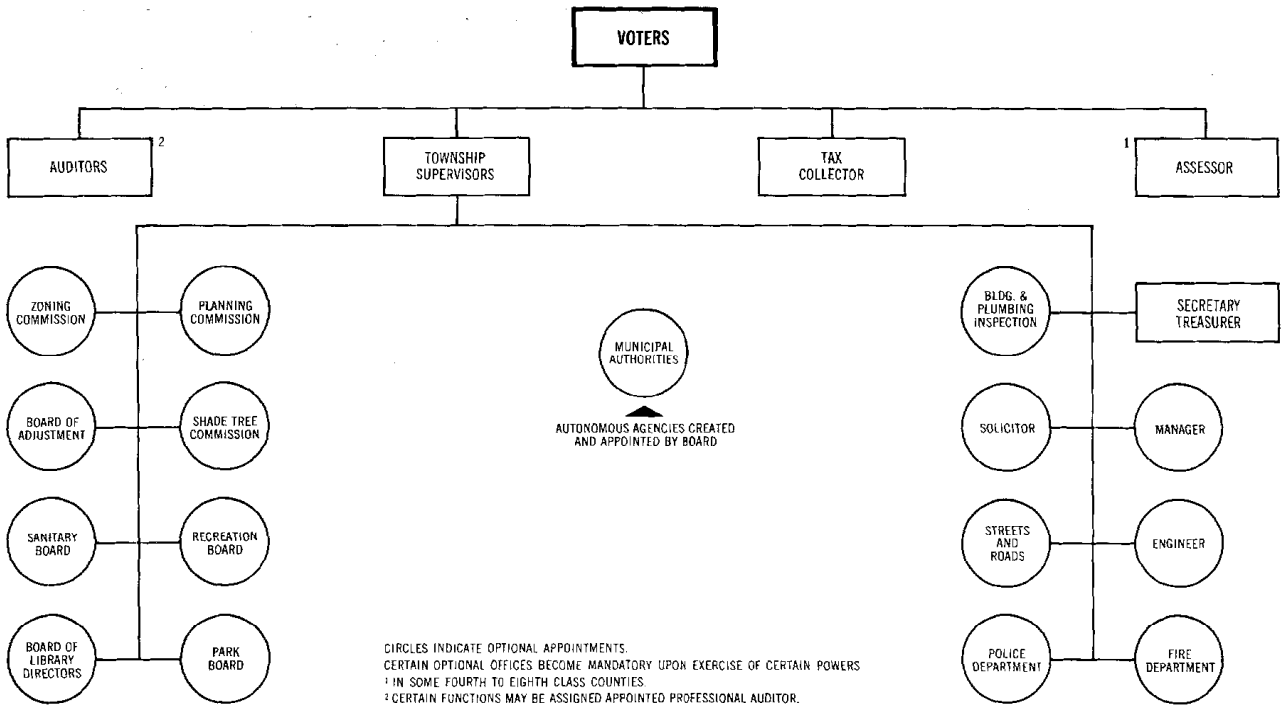
[2] MAY BE REPLACED BY APPOINTED PROFESSIONAL AUDITOR

TYPICAL ORGANIZATION OF PENNSYLVANIA TOWNSHIP GOVERNMENT
TOWNSHIPS OF THE FIRST CLASS



CIRCLES INDICATE OPTIONAL APPOINTMENTS.
CERTAIN OPTIONAL OFFICES BECOME MANDATORY UPON EXERCISE OF CERTAIN POWERS.
[1] IN SOME FOURTH TO EIGHTH CLASS COUNTIES.
[2] MAY BE REPLACED BY APPOINTED PROFESSIONAL AUDITOR.

TYPICAL ORGANIZATION OF PENNSYLVANIA TOWNSHIP GOVERNMENT
TOWNSHIPS OF THE SECOND CLASS



CIRCLES INDICATE OPTIONAL APPOINTMENTS.
CERTAIN OPTIONAL OFFICES BECOME MANDATORY UPON EXERCISE OF CERTAIN POWERS
[1] IN SOME FOURTH TO EIGHTH CLASS COUNTIES.
[2] CERTAIN FUNCTIONS MAY BE ASSIGNED APPOINTED PROFESSIONAL AUDITOR.

PENNSYLVANIA COUNTY GOVERNMENT

Role of the County

The role of the county in the governance of Pennsylvania has both state and local dimensions. Traditionally and primarily, it remains an agent of the state for the purpose of the administration of justice, keeping of legal records, the conduct of elections, and the administration of poor relief. The County, over the years, has also been granted some powers more commonly considered local, rather than State, in character. Some of these powers are shared with the cities, boroughs, and townships (for example, parks and recreation); some are applicable only when a municipality or township fails to exercise the powers granted to it (for example zoning); but in only one instance—when county departments of public health are created—has it the opportunity to exercise exclusive jurisdiction over a function which is also vested within the other units of local government contained within its boundaries.

Classification of Counties

Until the passage of the Constitution of 1874, county affairs were regulated by special or local acts of the legislature, each act applying to a particular county designated by name. With the outlawing of such special or local acts by the present Constitution, all legislation concerning counties had to apply uniformly to each such political subdivision regardless of the substantial diversities they exhibited in terms of area, population, resources, and needs. In order to circumvent the constitutional ban against any special legislative treatment for Philadelphia and Allegheny Counties, the legislature, in 1919, developed a classification system for counties based upon population, a system which received a Constitutional sanction by an amendment adopted in 1923 (presently numbered Article III, Section 20). Each of the 67 counties in Pennsylvania is now included in one of eight classes. Table 6 shows the population requirements necessary for enrollment in each class, together with the number of counties in each of the eight categories.

TABLE 6. CLASSIFICATION OF PENNSYLVANIA COUNTIES

Class	*Population Requirements*	*Number of Counties*	
		1950	1960
1st	1,800,000 and above	1	1
2nd	800,000 to 1,799,999	1	1
3rd	250,000 to 799,999	6	9
4th	150,000 to 249,999	12	10
5th	95,000 to 149,999	7	7
6th	45,000 to 94,999	16	17
7th	20,000 to 44,999	15	13
8th	Fewer than 20,000	9	9

Although movement from one class to another is automatic as the population of a county increases or decreases, the legislature has provided that a county does not recede in the classification category until two censuses indicate a population below the minimum requirement for its particular class. In addition, the General Assembly has from time to time changed population requirements for the several classes of counties.[7]

Although provision is made in the Constitution (Article XIII) for the creation of new counties, the authorization is so circumscribed that it is very unlikely that their numbers will increase. Since the adoption of the Constitution of 1874, only one county has emerged--Lackawanna, which was created from a part of Luzerne in 1878. On the other hand, there is no provision, in either the Constitution or in the statutes, for any reduction in the number of counties, either through consolidation or other means.

County Law

Within the classification system established by the general assembly, the legislature in 1929 (Act of May 2, 1929, PL 1278) brought together many of the general laws relating to county affairs into the General County Law, the initial effort of codifying the hundreds of statutes relating to counties enacted over the preceding century and more. The present compilation of laws for third through eighth class counties, the County Code, was enacted in 1955 (Act of August 9, 1955, PL 323). It represents a further codification of its forerunner, the General County Law, and included those amendments enacted since the passage of the 1929 Act plus some earlier acts on county affairs not incorporated in the earlier document. In the preceding session of the general assembly, two years earlier, the legislature established another code of county laws applicable only to counties of the second class (Allegheny County). Commonly referred to as the Second Class County Code (Act of July 28, 1953, PL 723), it, like the County Code, is primarily the product of the 1929 General County Law, but includes as well some provisions and authorizations not contained in the code for other counties. Thus, for example, only counties of the second class have the express authority to engage in police protection, fire prevention, and smoke regulation. In addition to some of the distinctions between the code for second class counties and that for the counties of the third through eighth classes, there is also some variation in the provisions contained in the County Code itself. Thus, depending upon class of county, different organizational and procedural arrangements may be prescribed in such areas as property assessment, tax collection, prison administration, relief, and judicial administration.

While many of the basic laws for the conduct of county affairs are now contained in the two codes, many important provisions relating to the powers and duties of county officers are found elsewhere: in the Constitution, in the decisions of the courts, in special acts passed prior to the adoption of the

Constitution, in the codes of other classes of political subdivisions, and in general legislation.

Home Rule

Unlike its general treatment of other classes of political subdivisions, the Constitution of 1874 (Article XIV) specifically enumerates county offices, their manner of election and their terms of office. Because of the Constitution's express requirement for the election of a number of county administrative officers, from a practical standpoint a grant of legislative authority to counties to devise their own organizational structure would be meaningless, as would be any legislation authorizing optional forms under which a county may choose to govern itself in the manner established for third class cities.

In a sense, the County of Philadelphia has been granted the right of home rule, but only as an indirect effect of the consolidation of the City and County of Philadelphia. With the vesting of all vertically administrative functions of the County of Philadelphia in the City, even though technically Philadelphia County still survives as a legal entity, its existence is more one of name than of fact.

The General Assembly also has constitutional authority to provide a home rule charter for Allegheny County. An amendment to the Constitution in 1928 (Article XV, Section 4) provides a method by which all county functions and some of those in suburban municipalities and townships could be vested in a new federated-type metropolitan government. Since the Constitutional amendments in 1928, only one charter, in 1929, has been presented to the voters of the county. It failed to achieve the two-thirds majority vote in the majority of the municipalities which the legislative act authorizing the referendum required for its approval. Although a new constitutional amendment in 1933 eliminated the possibility of any imposition of a "two-thirds" requirement on future legislative authorizations, and provided for a simple majority vote in a majority of municipalities, no new charter has received the legislative approval necessary to its submittal to the Allegheny County electorate.

As in the case of laws applicable to other classes of political subdivisions, to the extent that optional legislation indicates the presence of home rule authority, it can be said that counties also contain some elements for self governance. Not all of the legislation affecting counties is mandatory, and some of it is permissive, thus affording a degree of discretion to these jurisdictions in the management of their local affairs.

Structure

Counties, by Constitutional and statutory directive, must organize and operate under a modified commission form in which legislative powers are vested in the board of county commissioners, while executive and ad-

ministrative authority is dispersed among a variety of popularly elected administrative officers, the courts, and the board of commissioners itself. There are two principal points of focus in county governmental structure: the board of commissioners and the courts. The duties of the elected, constitutionally mandated controller (or auditors) and treasurer relate mainly to the functions of the board of commissioners. The duties of the rest of the constitutionally required, elected officers—sheriff, coroner, surveyor, prothonotary, register of wills, recorder of deeds, clerk of courts, and district attorney relate mainly to the judicial processes of county government.

The board of commissioners consists of three members, elected concurrently for four-year terms, as provided for in the Constitution. In an attempt to insure minority representation, only two candidates may be nominated from each party in the primary, and an elector is limited to voting for but two persons appearing on the ballot in the general election.

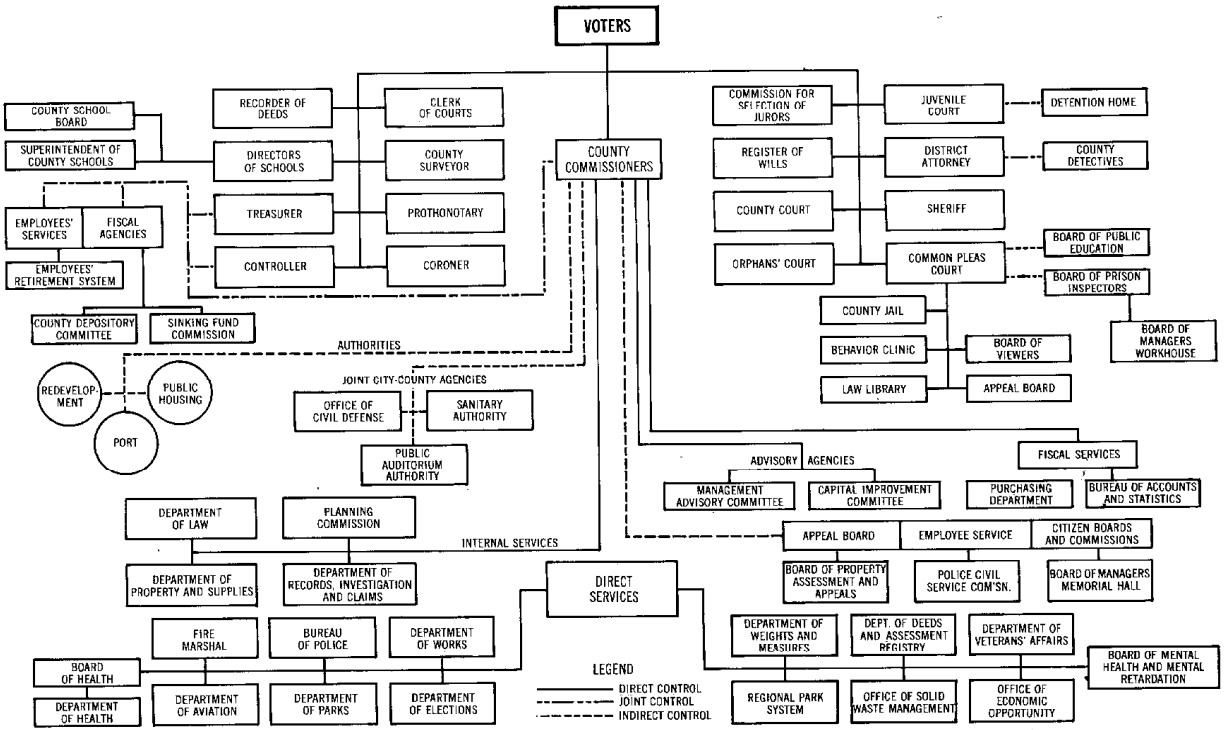
By and large, the board is responsible for the day-to-day supervision of county affairs (although as indicated earlier, many such duties are shared with a host of other independently elected officers whose election is required by the Constitution); and as the legislative body of the county, it has the opportunity to make policy, through the enactment of appropriate resolutions and ordinances on such matters as may fall within the county's area of jurisdiction.

Although the following listing is by no means all inclusive, it may help to provide some understanding of the sources of power of the board. The board of commissioners has: (1) broad fiscal authority, including the power to levy taxes, create debt; (2) broad powers of appointment within the agencies under its direction, largely unconstrained and uninhibited by either civil service or merit requirements; (3) responsibility for the exercise of certain county-wide functions, particularly in the health and welfare fields, which includes the authority to determine the manner and extent to which they will be performed; and (4) a dominant position on various county boards and commissions, particularly the salary board, which enables the board of commissioners to exercise a considerable degree of control over even those agencies not under their direction or supervision.

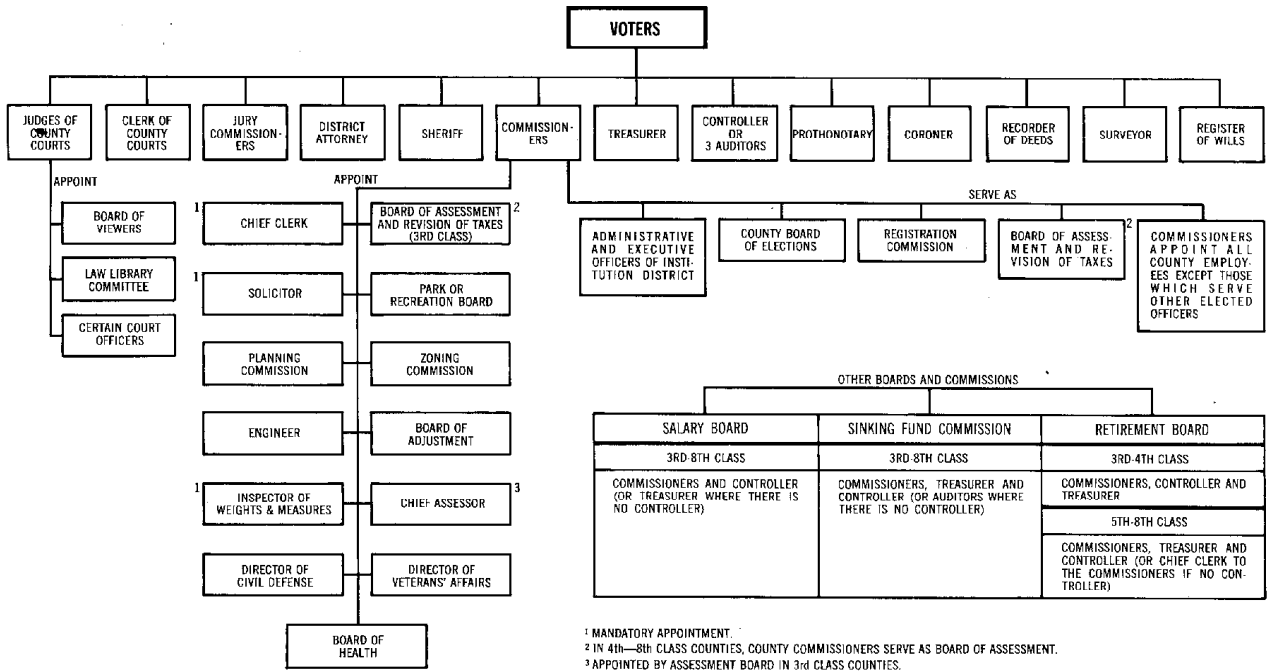
The array of popularly elected administrative officers who share the executive and administrative powers of the county with the board of commissioners are also elected for four-year terms. One such officer, the county treasurer, is prohibited by Constitutional directive from succeeding himself in office.

The Constitution also empowers the legislature to establish county offices above and beyond those mandated in the Constitution itself. Some of the offices created by legislative action are required additions to the county structure; others are left to the option of the board of commissioners to establish or not establish as they deem fit. Charts 10 and 11 outline the structure of county government.

ORGANIZATION OF PENNSYLVANIA SECOND CLASS COUNTIES
COUNTY OF ALLEGHENY



TYPICAL COUNTY ORGANIZATION CHART
THIRD TO EIGHTH CLASS COUNTIES



[1] MANDATORY APPOINTMENT.
[2] IN 4th—8th CLASS COUNTIES, COUNTY COMMISSIONERS SERVE AS BOARD OF ASSESSMENT.
[3] APPOINTED BY ASSESSMENT BOARD IN 3rd CLASS COUNTIES.

MUNICIPAL AUTHORITIES AND SPECIAL DISTRICTS

In addition to counties, cities, boroughs, townships and towns, there exist in Pennsylvania numerous municipal authorities and special purpose districts which exercise government functions.[8]

Municipal Authorities

Although they owe their existence to various units of local government, authorities are not a part of what is commonly considered to be the normal local governmental structure. Authorities are public corporations incorporated for the purpose of financing and managing various revenue producing projects of a public nature.

The circumstances which prompt the creation of municipal authorities usually fall within one or more of these categories:

> The need for a method of financing public improvements that does not conflict with constitutional and statutory debt limitations.
>
> The need for an administrative agency to manage public enterprises which, in certain cases, have commercial characteristics.
>
> The need for an agency which can cross governmental boundary lines for effective handling of intercommunity problems.

The original Municipal Authorities Act was passed in 1935; however, counties of the second class were empowered to establish authorities in 1933 (1933 Sp. Sess. PL 114) for purposes of engaging in a variety of public works projects.[9] The present law governing the creation of these public corporations was adopted in 1945 (1945 PL 382, as amended). This act permits any county, city, borough, town or township to create authorities for a variety of public purposes. As bodies corporate and politic, authorities are empowered to acquire, hold, construct, improve, maintain and operate, own, and lease projects of the following kind and character:

A. Buildings to be devoted wholly or in part for public uses, incuding public school buildings.

B. Projects for revenue-producing purposes as follows:
   1) Transportation, marketing, and shopping facilities.
   2) Terminals, bridges, tunnels, and flood control projects.
   3) Highways, parkways, traffic distribution centers, parking spaces, airports, and all facilities necessary and incident thereto.
   4) Parks, recreation grounds and facilities, playgrounds, and swimming pools.
   5) Sewers, sewer systems or parts thereof, and sewage treatment works including plants for treating and disposing of industrial wastes.

6) Steam heating plants and distribution systems.
7) Facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incinerator, land fill or other methods.
8) Incinerator plants.
9) Waterworks, water supply works, and distribution systems.
10) Lakes and low head dams.
11) Hospitals.
12) Motor buses for public use when such buses are to be used within any municipality.
13) Subways.
14) Industrial development projects.

The 1945 Act also empowers the Commonwealth's school districts to establish authorities for the purpose of acquiring, conducting and operating public school facilities.

To enable it to carry out its programs, an authority has various corporate powers. Some of the more important are the powers:

to have an existence of fifty years, which may be extended by amendment to its incorporation articles.

to sue and be sued.

to adopt by-laws for the management of its affairs.

to borrow money.

to fix and collect charges and assessments in the area served by its facilities and projects.

to acquire property by eminent domain.

The local legislative body authorizes the creation of the authority and appoints its governing board. Where the authority is created by one political subdivision, the board consists of not less than five members appointed for staggered terms of five years. The board of a joint authority is required to have at least as many members as the number of sponsoring municipalities, but in no case less than five. Members of an authority's governing body can be removed for cause upon action before a court of quarter sessions of the county in which the authority is located.

The project or projects to be undertaken by the authority may be specified at any time by the local governing body. If no specific projects are designated, the authority may undertake any or all of the projects authorized by the 1945 Act. If certain projects are stated, however, an authority's power is limited to those named. With the exception of refuse collection and disposal facilities and industrial development projects, an authority is forbidden by law to operate projects which duplicate or compete with private enterprises.

An authority may be involved with both the financing and operation of a project, or it may merely finance the facility, leasing its operation to the local governmental unit which created it.

Revenues which an authority uses to retire its indebtedness and to meet operating or other expenditures are obtained from the imposition of user charges, special assessments or rentals paid by a leasing jurisdiction. Authorities also are authorized to accept grants-in-aid. The reasonableness and uniformity of an authority's rate structure and the quality or level of its service programs may be questioned by action in the court of common pleas.

Upon full payment of all outstanding obligations, an authority may convey title of its property to the municipality or municipalities in which it is located, and then may terminate its existence. In the case of a public school building, the property may be conveyed to the appropriate school district. The municipality or school district, by resolution signifying its desire to do so, may acquire the property at any time by assuming all the obligations of the authority with respect to that particular project.

Of all the types of public service agencies in Pennsylvania, the municipal authority is the fastest growing. By 1965, 1,769 authorities were in existence, approximately 95 per cent having been incorporated since 1945. In the period 1955 to 1965, 969 authorities, about 55 per cent of the total number of existing public corporations, were created.[10]

Of the 1,769 public corporations, 1,609 (approximately 91 per cent) are single purpose authorities created primarily to provide only school buildings, or sewer facilities, or water projects. Table 7 shows the number of single purpose authorities by project and by year of incorporation.

TABLE 7. SINGLE PURPOSE AUTHORITIES

Period of Incorporation	*Purpose*					
	School	*Sewer*	*Water*	*Parking*	*Airport*	*Miscellaneous*[a]
1935–1944	2	9	30	0	0	2
1945–1954	378	101	95	34	12	17
1955–1965	382	273	105	58	16	64
TOTAL	762	383	230	92	28	83

Note: Tabulation does not include 31 authorities because information is not available as to their purpose.

[a] Miscellaneous authorities include the following kinds of projects: municipal building, incinerator, park, swimming pool, garbage and refuse disposal, flood control, mine fire control, factory building, theater, toll bridge, public transportation, and industrial park.

In addition to the statutory powers of the Municipal Authorities Act of 1945, several classes of Pennsylvania's local government are empowered by law to create public authorities for the following specific purposes or projects:

A. *Parking Authority* (1947 PL 458, as amended)
- All cities, boroughs, and townships of the first class are authorized to create such an authority.
- It is governed by a five member board appointed for staggered terms of five years by a city's chief executive officer (in the case of a township of the first class or borough, by the chairman of the governing body).
- The authority is empowered to build, operate or lease public parking facilities; however, it may not engage in activities (such as the operation of gasoline service facilities) which are competitive with existing private operations.

B. *Port Authority* (1956 PL 1414, as amended)
It is created by statute for counties of the second class.
- Its governing board is not to exceed eight members, as determined by the board of county commissioners.
- The authority board members serve five year staggered terms, and authority board representation is provided a county bordering the second class county, if the service of the authority extends to the area.
- The port authority has the power to acquire, operate, etc., port and transportation facilities.

C. *Urban Redevelopment Authority* (1945 PL 991, as amended)
- All cities and counties (except those of the first class) may create redevelopment authorities, provided the jurisdictions establish a need for such corporations.
- Its general purposes are the elimination of blighted areas and their conversion to socially and economically desirable land uses.
- The authority is governed by a five member board appointed by the Mayor, if a city authority, or the board of commissioners if the authority is a county creation.
- The members serve staggered five year terms.

D. *Public Auditorium Authority* (1953 PL 1034)
- Counties of the second class and cities of the second class may establish, either singly or jointly, an auditorium authority.
- Its operations are controlled by a five member board appointed by the mayor or board of commissioners if the authority is the creation of a city or county alone.
- If both the city and county act together, the mayor appoints two members, the board of commissioners appoints two and the fifth authority board member is named by both the mayor and county commissioners.
- Board members serve five year staggered terms.
- The authority is empowered to acquire, contact, operate and lease auditorium and similar facilities.

E. *Veterans' Housing Authority* (1947 PL 1414)
- Every city and each county (except of the first class) may create an authority of this nature, provided the governing body determines there is need for one.
- The authority's purpose is to provide temporary emergency housing facilities for veterans and their families.
- Its operations are governed by a five member board appointed by the mayor or county commissioners, and such authority is to terminate when the Governor declares the housing emergency is over.

F. *Housing Authority* (1937 PL 955, as amended)
- Every city and each county (except of the first class) may establish a housing authority; however, it does not become operative until the local governing body declares there is a need for such a corporation.

- If the governing body does not respond to the need, the governor may establish the authority.
- It is empowered to provide low cost rental housing to persons of low income.
- It is directed by a five member board appointed for staggered terms of five years.
- The appointing agent in second class and second class A cities is the mayor; in cities of the first class the mayor appoints two members, the controller two, the fifth member is selected by the four; in other cities, the mayor appoints two members and the governor three; in counties other than third class, the board of commissioners names the five member board; and in third class counties, the board appoints two members, the governor three.

G. *Metropolitan Transportation Authority* (1963 PL 984)
- Cities of the first class are the only local governmental units empowered to establish an authority under this act.
- The corporation is authorized to develop an integrated transportation system.
- Its governing body is composed of members appointed by the governor, mayor, and board of commissioners of each county in the metropolitan area.

These specific or single function authorities generally have the same corporate powers vested in corporations created under the Municipal Authorities Act of 1945. The fiscal methods employed by the former to finance projects also are similar to those used by the other authorities.

Institution Districts

The principal function of institution districts is to care for resident dependent persons for whom no other provision is made. Established in 1937 (1937 PL 2017, as amended), each district is an independent corporate entity, empowered to adopt its own budget, impose certain taxes, borrow money, and to buy and own property. Although an institution district is a separate governmental unit, no one is elected specifically to manage and direct its affairs. These responsibilities are vested in county officers, principally the board of county commissioners and controller.

The 1937 enabling legislation provided for institution districts in 66 counties and the cities of Philadelphia and Pittsburgh. The latter district was abolished by legislative act in 1943 and the Philadelphia district no longer is a separate entity apart from the city. In 1961, the General Assembly abolished institution districts in counties of the fourth, fifth and sixth classes, and transferred their function, property, and indebtedness to the regular county government. Similar action was taken in 1963 for institution districts in seventh and eighth class counties.

Township Service Districts

Within both classes of townships, the governing bodies may establish special service districts to facilitate the provision of certain services to more populated areas or villages. These districts, if created, are ad-

ministered by township officials and the services are financed from special tax levies or special assessments imposed upon those benefiting from the services. Both classes of townships are permitted by their respective codes to create service districts for street lighting, fire, water and sewage purposes. Townships of the second class may also establish special districts to provide police protection in populated areas.

Miscellaneous Service Districts

Other types of special governmental districts provided by Pennsylvania law are:

a. Water Supply Districts created by action of a court of common pleas for the purpose of providing water in municipal jurisdictions.
b. Soil and Water Conservation Districts created by a board of county commissioners for the purpose of developing projects and programs to protect and conserve soil and water resources.

INTERLOCAL GOVERNMENT COOPERATION

Legal Basis for Interlocal Cooperation

Legislation permitting cooperation between political subdivisions in the joint performance of governmental activities has been part of Pennsylvania Law for a number of years. The permissive legislation includes both general and specific grants of power to enter into joint agreements.[11]

The broadest and most significant grant of power for interlocal cooperation is the General Cooperation Law enacted in 1943.[12] This law empowers municipal authorities, cities of the third class, boroughs, incorporated towns, first and second class townships, and counties (other than first and second class) to cooperate with each other and with local governmental units in other states in the exercise and performance of any functions which each of them could undertake alone. Philadelphia is granted the same broad authority to enter into joint agreements through its Home Rule Charter. Counties of the second class derive the authorization from specific Pennsylvania statutes, and cities of the second class are granted authority in the second class city code and specified statutes.

The General Cooperation Law permits municipalities to enter into such joint agreements deemed appropriate for the purpose of putting into effect the provisions of the law. The law specifies no definite procedures for entering into joint agreements, but it includes authorization for advisory boards and study committees. It also calls for the allocation of costs on an equitable basis and the hiring of joint personnel. Joint agreements, the law states, become binding only after adoption by ordinance or resolution in each participating municipality. The law does not authorize one municipality to delegate any of its powers, duties or functions to another, nor does it

authorize any municipality to exercise such powers, duties or functions on behalf of another municipality.

In addition to this broad grant of authority contained in the 1943 law, the codes governing boroughs, townships of the first and second classes and cities of the third class contain provisions authorizing these units of government to cooperate with other political subdivisions in carrying out governmental programs which each could undertake separately.

Although the general powers to enter into intergovernmental agreements are broad and inclusive, the General Assembly has also authorized specific grants of power for intergovernmental action in numerous functional areas. For example, Act 511, the non-property tax enabling act (originally Act 481) which grants extensive taxing power to local units, authorizes joint agreements specifically for the collection of taxes levied under the act.

Table 9 illustrates, by class, the range of other functions in which cooperative agreements may take place. It can be reasonably stated that the potential for using the device of intergovernmental agreements as a means to joint action is practically unlimited.[13]

General Pattern of Interlocal Cooperation

In 1958, the Bureau of Municipal Affairs, Department of Internal Affairs, conducted a study on intergovernmental cooperation.[14] The study does not indicate whether the agreements were formal or informal but the results are useful because they begin to show the general pattern of cooperation. Of the 780 municipalities surveyed, 647 returned a completed questionnaire, including 63 counties, 45 cities, 255 boroughs, one town, and 283 townships. The tabulations indicate a total of 617 agreements, involving 1,784 municipalities in some type of agreement for the joint performance of government services. The survey reveals that although agreements were reported in almost every major area of activity, the highest number of agreements concerned specific, necessary government services, indicating that most agreements came about as a solution to a single, mutual problem.

In descending numerical order, agreements were reported in the following activities:

Water	173
Fire	130
Sewer	94
Tax Collection	43
Recreation	27
Health and Hospitals	21

The remaining agreements concerned airports, comfort stations, county-municipal buildings, garbage collection, police, public safety communication networks, purchasing, and libraries.

TABLE 9. MAJOR FUNCTIONAL AREAS IN WHICH INTERLOCAL COOPERATION IS AUTHORIZED

Functional Area	*2nd Cl. County*	*3rd thru 8th Cl. County*	*1st Cl. City*	*2nd Cl. City*	*3rd Cl. City*	*Borough*	*1st Cl. Twp.*	*2nd Cl. Twp.*
General Power		X	X		X	X	X	X
Airports	X	X		X	X	X	X	X
Armories		X			X	X	X	X
Bombshelters—Civil Defense		X			X	X	X	X
Comfort Stations		X						
County-Municipal Bldg.	X	X	X	X	X	X	X	X
Flood Control				X				
Garbage Collection & Disposal	X	X		X		X	X	X
Health	X	X	X			X	X	X
Hospitals	X	X			X			
Historical Surveys	X	X						
Land Use	X	X	X	X	X	X	X	X
Libraries	X	X		X	X	X	X	X
Planning	X	X	X	X	X	X	X	X
Police Protection						X	X	X
Purchasing	X	X		X	X	X	X	X
Recreation	X	X		X	X	X	X	X
Sewage Disposal	X	X		X	X	X	X	X
Tax Collection				X	X	X	X	X
Transportation		X		X				
Water Supply	X					X	X	X
Zoning	X	X						

The principal advantages of the cooperative agreements advanced by the author of the 1958 study are: (1) financial savings, (2) increased efficiency of service, (3) needed regional action and (4) retention of community identity. The principal disadvantage listed was the dependence of such agreements upon the willingness of elected or appointed officials to continue the arrangement.

Another study done in 1961 on intergovernmental agreements among all the municipalities in Southeastern Pennsylvania reported a similar pattern of interlocal cooperation. The result was a total of 693 agreements which were both formal and informal. The largest number of agreements related to:[15]

Police radio and other police action	169
Sewage Disposal	75
Fire Protection	51

The remainder were reported in the areas of refuse disposal, water supply, health, stray animal control, airports, and road and bridge construction and maintenance.

A more recent survey of formal agreements between Philadelphia and other governmental jurisdictions conducted in 1965 by the Office of Development Coordinator for the City of Philadelphia reported the following:[16]

Sewage Disposal (including 19 different suburban communities)	13
Finance Planning	1
Water Supply	2
Transportation	4
Streets and Highways	4
Public Health	1
Public Welfare	1
Airports—Zoning	2

In addition, the survey also reported a regional open-space planning agreement.

The available data lead to a few broad conclusions about interlocal cooperation in Pennsylvania. The 1958 survey of intergovernmental agreements indicates that fire, water, and sewer agreements are the most prevalent. Boroughs and townships entered into more agreements than counties, and cities entered into fewer agreements than any other unit.

Similar observations can be gleaned from the 1961 and 1965 surveys. However, there is an indication of an increase in the number of police protection and police radio network agreements, and, joint agreements are being utilized in new areas such as planning, transportation and public welfare.

The collective data on interlocal cooperation shows that intergovernmental agreements and contracts are the most widely used form of joint action. Most government units enter into joint agreements and contracts

for a commodity type of service such as water, or technical service such as police radio networks, in order to solve a single mutual problem. There is little evidence to indicate that the potential for interlocal cooperation in areas requiring program development and long-range policy decisions, such as planning and urban renewal, has been utilized as extensively.

GENERAL OBSERVATIONS AND CONCLUSIONS

Generalizations and comparisons between Pennsylvania local government and that in other states is a formidable undertaking, primarily because of the complexity of the institution of local government: extensive number of local units and variation in laws relating to political subdivisions in this country. Therefore, the following comparative observations are not all inclusive, but merely representative.

- Dillon's Rule restricting the powers and responsibilities of political subdivisions is the prevailing doctrine of local government law in Pennsylvania and in most other states as well. The doctrine necessitates expressed legislative authority before a municipality can act on any matter confronting it.
- The Commonwealth of Pennsylvania has more counties, cities, boroughs, townships and special districts (municipal authorities) than any other state, except Illinois.
- More than 93 per cent of the cities, boroughs and townships in Pennsylvania have less than 10,000 population, and approximately four out of ten of its local governmental units have populations of less than 1,000. The local government population pattern in the State is similar to the over-all national pattern.
- Local government structure in Pennsylvania conforms generally to that found in other states.[17] The Commonwealth has the four popular forms: strong mayor-council, weak mayor-council, commission, and council-manager.
- The size of local governing bodies in Pennsylvania is not excessive in comparison to the national average of five members.
- A councilman's term of office (normally four years in this State) is similar to that which generally exists in other states. Nation-wide, 50.5 per cent of the councilmen serve overlapping four year terms and 38 per cent serve two year terms.
- The mayor in Pennsylvania's mayor-council jurisdictions is popularly elected and possesses a veto power. These are prevalent practices in non-Pennsylvania jurisdictions functioning with this local governmental form. The term of a Pennsylvania mayor is four years. Nationally, about 51 per cent of the mayors are elected for two-year terms and 37 per cent are selected for a four-year term of office.
- Nation-wide, the two most popular forms of local government are the mayor-council and the council-manager plans. The former governmental structure predominates in cities over 250,000 and under 25,000 in population. The council-manager plan is the most popular form in cities between 25,000 and 250,000 in population. Approximately 51 per cent of the nation's cities over 5,000 in population have the mayor-council form, 40 per cent have adopted the council-manager plan, and 8 per cent use the commission structure. Although the commission plan (or a variation thereof) predominates in Pennsylvania, its largest cities, as well as most of the boroughs, operate under a mayor-council form. The council-manager plan in this State is found generally in jurisdictions with populations between 5,000–10,000; however, this plan is not the predominant governmental structure in this population range.

- In Pennsylvania there are more than 12,000 mayors and governing board members who are popularly elected. In addition, there are approximately 10,000 officials who are elected and whose primary responsibilities are fiscal in nature, such as tax collection and auditing. Nation-wide, about 52 per cent of the cities do not elect officials other than mayors or councilmen. In about 14 per cent of the reporting cities, the post of auditor (controller) is an elected one; the treasurer in about 30 per cent of these cities is popularly elected; and in approximately 24 per cent the clerk is selected by the populace.
- The Pennsylvania electorate has little, if any, direct power to determine the structure of its local government. Except for cities of the first and third classes, the local government structure is constitutionally or legislatively mandated or determined by the local governing body. Various states, New Jersey and Massachusetts for example, provide that the voters may select a local governmental structure from a series of options provided by the State; others permit some or all municipal governments to draft and adopt "home rule" charters.
- The primary differences among local governments in Pennsylvania are structural, not substantive, in nature. All cities, boroughs and townships in Pennsylvania have broad comprehensive legal authority to provide their citizens with a variety of service programs. These powers for the most part are permissive, rather than mandatory, in nature; therefore, the quality and quantity of these governmental service programs are determined locally, depending upon citizens' desires and pressures and a jurisdiction's fiscal resources and administrative capabilities. Other states generally have adopted an over-all policy of distinguishing between incorporated and unincorporated areas and delegating much greater authority to perform urban services to the former. Pennsylvania has not made such a distinction.
- It is relatively easy in Pennsylvania to create additional local governments; the law governing the incorporation of boroughs contains no meaningful standards or population requirements; special districts, authorities, can be established at will by local action; and the State's complex annexation laws encourage the incorporation of areas vulnerable to loss of territory. Certain states, particularly California and Minnesota, have adopted legislation restricting unlimited incorporations. Other states have acted to cope with the "local fragmented problem" by setting forth standards and more uniform procedures.
- The Pennsylvania General Assembly has classified counties, cities and townships into 14 classes or categories (boroughs have not been classified). Within this classification system, five classes contain only one governmental unit each, two other classes contain nine political subdivisions, another contains seven, and so on. Adopted to prevent "special legislation," the absence of numerous units in a particular class results, for practical purposes, in special legislation. The adoption of special legislation to control local governmental affairs continues to be used on the national scene, particularly in the country's New England and Southern regions.
- Pennsylvania's local governments have broad authority to participate in a variety of intergovernmental activities. Although most of these governmental units have had such power for more than 20 years, available data indicate that the powers are not widely used and that when jurisdictions do cooperate in formal intergovernmental agreements, the extent of such cooperation generally is limited to a single function. Two-thirds of the states have adopted legislation permitting broad interlocal cooperation. In seven of these states, the legislation is backed by specific constitutional provisions authorizing intergovernmental cooperation.

This description of Pennsylvania local government has not explicitly discussed problems which affect the functioning of this basic democratic institution in our governmental system. Whether there are local government "problems" requiring resolution or amelioration is dependent to a large extent upon one's perceptions, value system, self interests, etc. Recognizing these factors and influences, it is suggested that issues or "problems" involving such matters as state-local relationships, interlocal relationships, the nature and extent of local government power and authority, the role of the electorate in local government, and the size and capability of local government to perform in an urban environment merit consideration by a constitutional convention.

Notes to Chapter 2

1. Dillon, *Municipal Corporations*, Section 237 (5th ed.—1911).
2. For a detailed account and interpretation of the position of Pennsylvania courts in determining the scope of municipal authority, see John H. Vanderzell, *The Scope of Municipal Power as Interpreted by Pennsylvania Courts*, Bureau of Municipal Affairs, Commonwealth of Pennsylvania, Harrisburg, 1961.
3. Adapted from: U.S. Department of Commerce, Bureau of Census, *Census of Government: 1962—Government in Pennsylvania*. Exact figures as to class of local units vary slightly according to source.
4. Adapted from the Department of Internal Affairs, *Bulletin*, January 1967. Volume 35, No. 1.
5. Adapted from the *Directory of Pennsylvania Council-Manager Municipalities and Municipal Managers-1967*, Institute of Local Government, University of Pittsburgh.
6. Compiled from Department of Internal Affairs, *Local Government Financial Statistics*, 1964.
7. See for instance, 1955 PL 323, 1951 PL 947 and 1949 PL 401.
8. The organization and structure of school districts are not intended in this description.
9. Counties of the second class still possess this power.
10. Data adapted from the Department of Internal Affairs, "Original Bond Issue by Type of Project, 1965" Release No. A-65, October, 1966.
11. The focus of this section is on those intergovernmental agreements which are formal (a written compact or agreement) and not those which are informal (a verbal or mutual understanding). This section will not include information on those intergovernmental agreements which result in the creation of a municipal authority.
    Data available on intergovernmental agreements are limited and incomplete. There is no up-to-date study delineating either the number or content of intergovernmental agreements in Pennsylvania, and most of the studies and articles on intergovernmental agreements do not specify whether the agreements are formal or informal.
12. 1943 P.L. 340, as amended.
13. The major studies and reports relating to interlocal government agreements and contracts in Pennsylvania are:
    George S. Blair, *Interjurisdictional Agreements in Southeastern Pennsylvania*, Fels Institute of Local and State Government, University of Pennsylvania, January, 1960.
    Francis M. Geisler "Intermunicipal Cooperations in Tax Collection," *Pennsylvanian*, March 1966, pp. 9-10.
    Martin J. Kelly, Jr., "617 Agreements Link 1,794 Municipal Units in Cooperative Action," Department of Internal Affairs, *Bulletin*, July 1958.
    Sidney Wise, ed. *Selected Areas of Intergovernmental Cooperation*, Bureau of Municipal Affairs, Department of Internal Affairs, Commonwealth of Pennsylvania, 1962.
    "Cooperative Agreements and Arrangements—Philadelphia and Other Governmental Jurisdictions." *Pennsylvanian*, December, 1965, pp. 4-6.

Advisory Commission on Intergovernmental Relations, Washington, D.C. March 1967, *A Handbook for Interlocal Agreements and Contracts.*

14. Kelly, *op. cit.*
15. Blair, *op. cit.*
16. *op. cit.* "Cooperative Agreements and Arrangements—Philadelphia."
17. National data are for cities over 5,000 as compiled from the International City Manager's Association, *The Municipal Year Book—1967.*

CHAPTER 3

Local Government Issues and Their Implications for Constitutional Revision in Pennsylvania

Even a cursory review of the records of recent state constitutional conventions and preparatory commissions and of the nation-wide literature of local government will make clear the fact of widespread controversy over questions relating to the structure, power, and performance of local government; to the inter-relationships of local units one to another and to the state; and to the special problem of ways and means of dealing with matters which are essentially area or regional in nature rather than local.

It is not the intent of this chapter to analyze in detail the issues presented nor to focus them on the particular local government articles and sections of the Constitution of 1874. Their relevance to these articles and sections is made a part of the discussion in Chapter Four, specifically under the Comments and Alternatives and Proposals headings which relate directly to the particular provision under discussion; and in Chapter Five, some of them are treated under topical headings of matters not now covered by the existing constitutional provisions.

It does not follow, of course, that all issues of local government are constitutional issues. It may well be, in the opinion of the Constitutional Convention, that some of the issues listed below are statutory rather than constitutional, or that they are really not issues at all. Without judgment on either of these points, they are cited here by the Preparatory Committee because they have most frequently been advanced as issues, either in other state constitutional deliberations, by national authorities and organizations, by prior Pennsylvania constitutional commissions, or in the public hearings conducted by the Preparatory Committee itself.

HOME RULE

The issue of home rule for local government has a long constitutional history extending at least into the last quarter of the nineteenth century, and it continues as the subject of debate, not only on the question of the form it should take in the constitution and the degree to which it should be extended to classes of local units, but also on the very nature of the doctrine or theory on which it is based.

In approximately half of the states, some variation of home rule is recognized in the constitution. What began almost a century ago as a means to overcome the abuses of special and local acts, and developed later as a municipal strategy to offset the indifference or restrictiveness of rural-dominated legislatures, home rule is now asserted by its protagonists to be indispensable to the effort of local government to cope with changing conditions and to avert the devitalization of local power and decision.

In its simplest and most classic form, the constitutional issue of home rule centers on the effort to allocate power between state and local governments along lines which would grant to the latter authority to deal with matters of purely local concern, while assuring to the former all necessary authority to deal with matters of state-wide interest and responsibility.

Pennsylvania joined the list of home rule states in 1922 through an amendment to Article XV, Sec. 1, of the Constitution of 1874, as follows:

> "Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the *powers and authority of local self-government*, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof, and approved by a majority of those voting thereon." (Emphasis supplied.)

As noted later in this discussion (pages 50 to 52) and in Chapter Four with specific reference to proposals for revision of Article XV, Sec. 1, those who advocate a different approach to home rule in Pennsylvania take issue with the phrase "powers and authority of local self-government," emphasis to which has been supplied in the above citation. They see this as a qualifying phrase, impossible of definition, requiring unending litigation, and responsible, at least in part, for the fact that more than twenty-five years elapsed before the charter right was ever granted, and then only in the case of the City of Philadelphia.

A second objection to the approach taken to home rule in the existing provision is that the power to frame and adopt local charters can be exercised only upon legislative authorization. This objection adverts to a very fundamental difference of opinion among otherwise united supporters of constitutional recognition of the home rule principle. There are those who believe that the authorization for local charter-making must be *self-executing*, i.e.,

made available directly by the constitution rather than placing it within the discretion of the legislature to grant or withhold. This is the pattern in a number of state constitutions, and represents home rule in perhaps its most comprehensive form. In passing, and as will be fully noted in Chapter Four, this pattern was recommended by the Woodside Commission in its proposals for revision of Article XV, and endorsed by the Pennsylvania League of Cities in the public hearings conducted by the Preparatory Committee.

On the other hand, a number of states employ the non-self-executing Pennsylvania system whose effectiveness is dependent upon legislative implementation, and as a well-known writer has pointed out, "It is obvious from practice that more than one system is workable. If a state has an ongoing doctrine which gives reasonable satisfaction to local communities, there may be no good reason to change to the latest model."[1] The critics of the Pennsylvania approach question whether reasonable satisfaction with the present system does exist, and contend that the almost total lack of legislative authorization is proof enough that the system has not worked.

Both the Woodside Commission in 1959 and the Scranton Commission in 1964, while differing on the self-executing feature of local charter-making power, limited their recommendations to the inclusion of cities and boroughs only. There are advocates of the proposition that home rule charter making should be a power of cities only, to the exclusion of counties, boroughs, towns, and townships, while some groups seem to give general support to extending the power to all of these subdivisions.

In general, writers and authorities in the field of home rule appear to be divided on the question of the extent to which home rule should be extended across the range of local units. The traditionalists seem to support the inclusion of at least all incorporated municipalities, but those advocating a new look at home rule see a great danger in this view. Particularly in the absence of the residual powers principle discussed below, they see an unlimited extension of home rule as an effective barrier to a desirable reduction in the number of local units and a serious impediment to the legislature in bringing about any effective organization of government to deal with matters of an area or regional nature.

A variation of the home rule principle, in the form of authority to the General Assembly to provide optional plans for the organization and government of cities and boroughs, will be noted as being a part of the 1922 amendment to Article XV, Sec. 1, cited above. The substance of this authorization was retained in the recommendation of the Woodside and Scranton Commissions and is included in the proposals of the Bar Association. As noted in a following discussion on County Structure and Power (pp. 56 to 58), all three of these groups endorsed the optional plan principle for counties also.

As a concluding note on the general issue of home rule, and with more specific reference to the question of powers of local home rule units, mention must be made of two important considerations which have been incorporated

into one or the other of the models of the American Municipal Association[2] and the National Municipal League.[3] In Section 6(3) of the AMA draft, "charter provisions with respect to municipal, executive, legislative and administrative structure, organization, personnel and proceedure are of superior authority to statute . . . " This language would seem, in effect, to embrace the proposals made both by the Pennsylvania League of Cities and the Pennsylvania Local Government Conference endorsing the exclusive power of local governments to provide for the "wages, salaries, hours and conditions of employment of local employees." In section 8.03 of the alternative home rule provisions of the 1963 Model State Constitution of the National Municipal League, the powers of home rule political subdivisions to make transfers of authority and functions between and among them are made clear. This kind of provision would appear to be in accord with the frequently advocated general principle that local units should have maximum freedom to adjust their power and authority to local situations.

Residual Powers

This issue goes to the heart of the question as to how the constitution can best assure a working relationship between state and local governments, in which the legitimate interests of both are protected toward the common goal of effective service to the people. The issue arises largely out of the widely-held view that the older and traditional constitutional approaches to home rule have failed to recognize the complexity of contemporary affairs, have not provided the proper framework for local policy decision and execution, and have had the unhappy result not only of unduly burdening the legislature with the necessity for excessively detailed decision but have also thrown into the judicial forum the responsibility for deciding questions that are essentially more political than legal in character.

Those who hold this view make very much of the point that the continuing application of Dillon's Rule (see Chapter Two, p. 5) is the major source of the problem. They would modify, if not abrogate, this rule of law by substituting for it a constitutional principle of "residual powers" which, in effect, would declare that political subdivisions, or specified classes thereof, possess all powers not denied to them by the constitution or by general law.

If the Constitutional Convention were to adopt the residual powers principle, as some other states have done (see Chapter Four, p. 67), and as the Woodside Commission in part recommended in 1959, it would reverse the classical Pennsylvania presumption that political subdivisions possess only those powers expressly granted to them or clearly implied, and would remove much of the ambiguity now surrounding the present constitutional phrase "the powers and authority of local self-government."

The proponents of the residual powers principle, first advanced by the American Municipal Association,[4] and now including the National Municipal

League and the Advisory Commission on Intergovernmental Relations, argue that it is the only really workable solution to the exceedingly complex and enduring problem of home rule. It is their contention that state and local governments today have a concurrent, rather than a precisely-divisible, interest in a wide range of governmental activity, and that the neat separation of functions into "state" and "local" categories is no longer possible, if indeed it ever was. They hold that population growth, urbanization, and a host of social and economic changes present a whole new series of challenges to both state and local governments, and that whereas home rule may once have been viewed and advocated as a defense on the part of local government against legislative abuse, it now must be viewed as a positive instrument for strengthening local government by investing it with powers commensurate with its modern responsibilities, not the least of which is the obligation to perform effectively within a framework of responsible autonomy.

Advocates of the traditional home rule approach which, in principle, has prevailed in Pennsylvania would seem to wish to extend it. They seem to argue for greater and more detailed constitutional specification of "local" authority placed above and beyond the power of the legislature. Whether the general thrust of their approach would really result in an *imperium in imperio* is a matter of debate but, in any event, it appears to proceed from a strong feeling of distrust of legislative interest in what they regard as genuine home rule, and they feel it unsafe, under the residual powers principle, to accord the legislature substantially plenary authority to prescribe limitations on local power by general law.

Moreover, those who favor the traditional approach are not impressed with the claim that the application of the residual powers principle would diminish the necessity for judicial interpretation of local power. They foresee manifold and exceedingly difficult legal questions arising from the exercise of local powers within the context and presumed applicability of a substantial body of case law which has been built up on the concept of Dillon's Rule. They question the wisdom and practicability of substituting limitation by general law for the express grant approach now represented in the several municipal codes.

And, finally, those not persuaded to the residual powers principle point out that, to be workable, it would seem necessary to restrict its application to certain classes or categories of jurisdictions, e.g., to "home rule" charter municipalities; and to apply such a principle to some jurisdictions and not to all would be manifestly unjust. On the other hand, they contend that to apply it to counties, as well as to cities and boroughs, for instance, would raise all kinds of troublesome and perhaps unanswerable questions on conflict of authority between the county and the political subdivisions. (This appears to result from a misunderstanding of the plenary power of the legislature to make determinations of this sort under the residual powers principle.)

In summary, the issue of a new constitutional approach to the powers and

authority of local government appears to be of fundamental importance for consideration by the Constitutional Convention. The implications of the adoption of the residual powers principle are extensive indeed and, dependent on the point of view, could represent one of the most far-reaching and progressive steps the state could take toward a modern approach to state-local relations, or a dangerous venture into a yet-untested doctrinal area where the questions raised would outnumber those answered.

LOCAL GOVERNMENT STRUCTURE AND ORGANIZATION

With the special exception of the county, which is discussed in the next section of this chapter, the issue of change in the current organization of local government appears chiefly to center around the familiar controversy over the relative desirability of "shall" or "may" in those constitutional provisions relating to the power of the legislature to act concerning such subjects as the incorporation, dissolution, and consolidation of local units; annexation and boundary changes; and transfers of powers between and among local units and from one level of local government to another.

The issue, therefore, does not seem basically to be one on which there are opposing views as to the power of the legislature, under the Constitution of 1874, to act in these subject areas. There appears to be general agreement that the General Assembly is endowed to prescribe a reorganization of local government if it should so choose, and that aside from the proscriptions of Article III with reference to special and local legislation, and with the special exception of the county, the structure and organization of Pennsylvania local government is largely within the competence of the legislature to design.

Disagreement stems, in the first place, from different philosophies as to what constitutes a rational organization of local government for modern needs and secondly, from differences in espoused approaches for the protection or advancement of individual positions or interests. For the most part, those who subscribe to and defend the ongoing structural pattern of local government are opposed to constitutional change, at least in any direction which would provide a new pattern or would mandate the General Assembly to do so. If any change is to be made, they contend it should be made in the direction of negative insertions which would protect the present pattern from legislative caprice.

There are variations of the opposing view, of course, but the predominant one appears to be that local government is badly in need of "modernization," and that the history of legislative action or inaction and the realities of political life provide strong reasons for arguing for constitutional standards and/or provisions which *mandate* the legislature to reorganize local government, to reduce the number of local units, and to provide new governmental mechanisms for special local problems of an area or regional nature. Those who

hold this view see little point in constitutional grants of authority to the legislature on a "may" basis. They take the position that such grants are both unnecessary and redundant within the well accepted constitutional doctrine of the plenary power of the legislature vis-a-vis local government, and are ineffective as a method for the implementation of organic policy.

Number of Local Units

Whether the number of local subdivisions and units has a direct relation to the capacity of local government to perform effectively may be a matter of debate, but it can scarcely be argued that the responsibility for determining the conditions under which the number of local units increases or decreases rests anywhere else except with the state.

The issue is the extent to which the constitution should prescribe conditions for the creation, merger, and dissolution of municipalities, in contrast to leaving such prescriptions to the undirected and unfettered authority of the legislature. The Constitution of 1874, within the limitations of Article III, Sec. 7, resolves the issue on the latter score, and the proponents of constitutional prescription see therein an explanation for what they view as a very irrational and excessively fragmented organization of government at the local level. On the other hand, without accepting the charge of excessive fragmentation, the defenders of the present structural pattern contend strongly that community decisions on the organization of local governmental power are not safely susceptible to state-wide determination, particularly in organic law, and that if anything, the heavy hand of the legislature should be constitutionally lifted from any local desires to form new communities or to abolish old ones provided, of course, that due protection is afforded to existing local units against the uncertainties and vagaries of temporary whim and caprice of electoral sentiment.

The Constitutional Convention could move in several ways, or combinations thereof, if it should deem it appropriate, to give constitutional recognition to the manner in which local units are created and by which they are consolidated or dissolved. Probably the simplest action would be a mere directive to the legislature to provide for these matters by general law. This, in effect, was the recommendation made by both the Woodside Commission in 1959, and the Scranton Commission in 1964, with the important difference that the recommendation of the latter group would constitutionally protect the consent of the local electorate in matters relating to consolidation, dissolution, or alteration of boundaries. On this point, the proposal of the Pennsylvania Bar Association is in agreement with that of the Woodside Commission.

The Convention could go a step farther and incorporate into its directive such language as would reflect a basic constitutional policy or guide for statutory implementation. For example, the relevant section of the American

Municipal Association's model directs the legislature to "facilitate the extension of municipal boundaries to the end that municipal territory may readily be made to conform to the actual urban area."[5] Perhaps the strongest policy language is that setting forth the expressed purpose of the local government article in the Alaska constitution: "providing maximum local self-government with a minimum of local government units, and to prevent the duplication of tax levying jurisdictions."[6]

While the presently numbered Section 20 of Article III of the Constitution of 1874 authorizes the legislature to classify local units according to "population," it is likely that this specification is suggestive rather than restrictive, but in any event, it would not seem to be a barrier to any action the Constitutional Convention should wish to take in order to prescribe broad minimum standards requisite to the initial incorporation of a municipality.

It is quite possible that the Convention will find that the controversy over the fragmentation of local authority and the excessiveness of local units is not so much a state-wide issue as it is a regional or area issue, and that as a consequence, a special and different approach, within the limits of general law, may have to be considered. Later in this Chapter, this issue is more fully discussed. Suffice it to say at this point that constitutional provisions which relate solely to limitations on the creation of municipalities without reference to their dissolution, merger, or consolidation would scarcely appear to be an effective constitutional means for dealing with the problem of the number of local units.

Reference is made elsewhere to the proposals presented to the Maryland Constitutional Convention, and in connection with the point just discussed, it may be of interest to note the belief of the Maryland Convention Commission "that the authority by which local governments divide and incorporate, and by which independent *ad hoc* agencies are created, should be made more restrictive. Conversely, the authority by which local governments disestablish, consolidate, or merge should be made less restrictive, and the authority of *ad hoc* agencies should be subject to the authority of general local government."[7]

Annexation and Boundary Changes

The extent to which the subject of annexation and boundary changes is a constitutional issue depends rather fundamentally (a) on the degree of belief that basic or organic law should declare the intent of state policy and interest in the territorial arrangement of local functions, and (b) on one's view as to the historical record of the success, or lack thereof, that has come from efforts of the legislature to deal with this complex and controversial problem.

The Constitution of 1874 makes no specific reference to this issue and, except for the prohibitions against special and local legislation, it has generally been held to be within the plenary power of the General Assembly. Reference has been made above to the proposals of the Woodside and Scranton Com-

missions, endorsed by the Pennsylvania Bar Association, which would direct the General Assembly *inter alia* to provide by general law for the methods by which "municipal boundaries may be altered." Those who are dissatisfied with the present state of the law on annexations in Pennsylvania today see little gain from such a directive, because they contend that the legislature has already met such a specific requirement, however ineffectively.

Generally, the proponents of a constitutional provision in the area of annexation argue that the state must declare its interest in a local government jurisdictional arrangement which is sufficiently flexible to meet the changing demands of contemporary urban society, and that the constitutional prescription must be pointed enough to assure a specific and improved form of statutory implementation.

Perhaps a basic constitutional question regarding annexation proceedings is the extent to which the consent of the local electorate is required. It can be argued that many proceedings, particularly in heavily urbanized areas, involve considerations which have impact far beyond the limited interests of the particular territory concerned, and that, therefore, the interests of the broader area, perhaps even of the state itself, must be the overriding issue. On the other hand, the facts of local community life do not lend themselves easily to this persuasion, and the right of citizens to their choice of self-government is highly valued and jealously guarded.

The broader implications of the annexation issue and alternative courses for constitutional recognition of it are discussed rather fully in Chapter Five. It is pertinent to point out here, however, that the thrust of the issue is whether or not the constitution should prescribe the establishment of some kind of state agency such as a Municipal Boundary Commission which has been established constitutionally in Alaska,[8] and variations of which have been established statutorily in Wisconsin, Minnesota, and California. The latter is at the county level, but the essence of its power and responsibility is the same.

The argument advanced for the establishment of this kind of administrative device is that it is the only effective way by which the basic and broad interests of the state can be protected in the development of its local government structure, and by which the relevant and conclusive factors of population density, land use, need for organized community services, fiscal capacity, and area economic and social interests can be competently reviewed and reconciled.

Presently numbered Section 31 of Article III of the Constitution of 1874 which, in effect, prohibits the General Assembly from delegating to any special commission or board any power to perform a "municipal function," might seem to be a barrier to the establishment of a Boundary Commission, but this is not likely. Annexation can scarcely be held to be a "municipal function" within the intent of Section 31, and moreover, the weight of opinion in sustaining agencies of other kinds in the general municipal field would

seem to uphold the establishment of a Boundary Commission. Clearly, the Constitutional Convention seems able to address itself to the question in any fashion it should deem wise or necessary.

COUNTY STRUCTURE AND POWER

The resurgence of the county as a unit of local government and its potential for greater unification of authority, particularly in certain urbanized areas, has become a subject of very considerable attention in constitutional deliberations.

The National Association of Counties has been a leading proponent of greater flexibility in county structure and expanded governmental power,[9] and for many years the National Municipal League has taken a strong position in favor of constitutional provisions in this direction. State constitutions approach the matter of flexibility and power in a variety of ways, but perhaps most notably, Ohio, California, New York, and Michigan have provided a constitutional setting for maximum local self-determination at the county level.

The issue is joined in Pennsylvania largely on the question of whether the existing provisions of Articles XIII and XIV unduly hamper the growth and development of government at the county level by out-moded and detailed specifications of structure, and by denying to the people of the several counties a right of choice not only as to the form of their government but as to the scope of its authority.

Those who argue for a rather extensive revision of Articles XIII and XIV rest their case largely on their contention that modern requirements for efficient administration and policy execution cannot, in many counties, be met within the existing constitutional prescriptions for county government. They hold that the present provisions are much better suited to the earlier day when the county was viewed merely as a sub-branch of the state for a very narrow range of functions, than to the conditions of today when many counties are actually a very important unit of local government faced with responsibilities of an urban rather than an agricultural era.

As a minimum, revisionists would remove from the present constitution those provisions enumerating the county "row offices" on the grounds that the enumeration of such is properly a subject for statutory consideration and has no place in the Constitution. Beyond this rather simplistic, but very controversial proposal, there are others who would go much farther to "modernize" the present constitution in respect to county government.

Although actually encompassed within the broader proposals cited below, a rather specific change frequently advocated is the elimination of the limited-voting provision as it applies to the County Commissioners. While defended on the grounds of assuring minority representation, it has been under attack as being at variance with the principles of responsible government and creating conditions of confusion and political expediency.

In the view of some, a distinct gain would be a constitutional authorization or mandate to the General Assembly to provide optional forms of county organization and government from among which the electorate of a given county could choose in accordance with their local desires. (The 1959 Woodside Commission incorporated such a recommendation in its report, and this recommendation is supported by the Pennsylvania Bar Association.)

Perhaps the most far-reaching view is that which would go a considerable step farther and apply the home rule principle to counties both in substantive and structural matters. Reference has already been made to certain states whose constitutions do so, and the discussion in both Chapters Four and Five makes pointed citation to these. The argument is made by the advocates of the home rule approach, particularly within the framework of the residual powers doctrine, that certain counties have special population, economic, and social characteristics, and special needs which can best be met through local self-determination. This argument appears to be addressed particularly to the highly urbanized county, and ready illustrations of varying constitutional approaches to this special problem can be found in California, Florida and Missouri. In Pennsylvania perhaps the outstanding illustration of a recommended constitutional approach is that of the Metropolitan Study Commission of Allegheny County in 1955. The Commission urged the adoption of a constitutional amendment permitting Allegheny County to frame a home rule charter, and under the Commission's recommendations, the power would be invested in the County to set and enforce minimum standards in certain functional fields for all municipalities of the county.

A fair summary of the position of the advocates of revision would seem to be that the county has been short-changed in its constitutional endowment to function as an effective unit of local government; that modern urban conditions require maximum flexibility in structural arrangement, authority to cope adequately with responsibilities, and a maximum degree of local self-determination, particularly in highly urbanized localities. No single ideal structure can be expected to accommodate the variations among counties in geography, population, economic level, social conditions and political climate. If the unnecessary and unwise "flow by default" of responsibility to state and federal governments is to be abated in any degree, county government must be unshackled from the constrictions of tradition and equipped to function as a modern unit of local government.

The essential position of those who oppose changes in the county government provisions of the Constitution of 1874 is that county government in Pennsylvania is performing well and that, of all the levels of government, the right of the people to exercise their rights and to choose officials to govern them has most fully and wisely been safeguarded at the county level.[11] They question and deny the claim that greater efficiency and economy will result from a shorter ballot for county officials, claiming that administrative advantages may in fact be a virtue of decentralization, and that there is no con-

clusive evidence in the record of those jurisdictions whose administrative organization has been "modernized," that either economy, efficiency, or improved service has resulted.

While defending the "row officers" provision, there does seem to be general agreement among those opposed to any revisions otherwise, that a desirable change would be the elimination of the restriction against successive terms for the county treasuurer. The defense of the "row officers" is that it has worked; that it has a long historical tradition; that it is highly preferable to a centralization of appointive power in the County Commissioners; and that it enables the voter to fix responsibility for performance precisely where it should be fixed, a privilege often denied him under other forms of government.

It follows that those who have such a deep and abiding faith in the elective system see only deterioration and confusion resulting from constitutional changes which would open the door to variations in the forms and powers of county government within a single state. They point out the inevitability of serious and perhaps irreconcilable conflict between the county and municipal subdivisions if the home rule principle were to be attempted in the face of a long-standing body of Pennsylvania county statutory and case law.

In short, the defenders of the existing constitutional provisions relating to counties contend that the case for change has not been documented. Those who argue for change believe it has, but that in any event, it is self-evident. The Constitutional Convention will undoubtedly find that the advocates for each of these views will be able vigorously to press their side of the case.

AREA GOVERNMENT

One of the most incisive and direct statements on the area governmental issue to be found anywhere in the record of constitutional convention or commission proceedings is that of the Maryland Constitutional Convention Commission in its interim report issued in May, 1967, as follows: "The Commission believes that the trend toward the adoption of area-wide governments and authorities to cope with the problems arising from metropolitan growth suggests that it would be *improvident* for a new constitution to ignore either the situations where they can be used or restrictions upon them."[12] (Emphasis supplied)

In Pennsylvania, as in most other states, the issue of area or regional government has not, as a general principle, been accorded constitutional recognition. The reason may be that the concept itself is of relatively recent origin, developing largely out of the rapid pace of urbanization. In the view of some, it is much more clearly a statutory issue well within the competence of the legislature, particularly in the absence of constitutional restrictions to the contrary.

Nonetheless, it is clear that variations of the area issue are receiving more and more recognition in state constitutions. The preceding discussion on

county home rule is an aspect of the area issue, and particularly so where constitutions recognize such matters as city-county consolidations, or transfers of functions from municipalities to the county level. Reference has been made to states such as California, Missouri, and Florida, and there are others, but the draft proposals to the 1967 Maryland Constitutional Convention are perhaps more direct than any advanced to date in any other state.

In an indirect sense, Article XIV, Sec. 8, of the Pennsylvania Constitution of 1874, which relates to the abolition of county officers in Philadelphia, deals with the area issue, but much less so than Article XV, Sec. 4, which authorizes the General Assembly to provide for a federated municipality in Allegheny County.

The issue which relates to area, regional, or metropolitan considerations has, in recent years, been the subject of as much, if not more, attention on the part of scholars and writers, public and private study groups, and public officials than any other single issue of government in the field of federal-state-local relations.[13] The state constitutional aspect now seems to arise out of the degree to which, to use the word of the Maryland Commission, it may be "improvident" any longer to ignore it.

In Chapter Four, the area issue is touched upon to some extent with reference to relevant existing sections of Articles XIV and XV; and in Chapter Five, it is more fully discussed as an important aspect of the broader subject of interlocal relations, on which the Constitution of 1874 is largely silent. The discussion which follows in the pages of this chapter will attempt to identify only the broadest outlines of the issue as it relates to pro and con views regarding the propriety of its inclusion among considerations for constitutional revision.

Briefly stated, the thesis of the advocates appears to be that constitutional recognition must be given to the ever-growing need to develop, in densely populated urban localities, mechanisms of government with area-wide taxing authority and powers to make effective decisions concerning such matters as area transportation, water supply, air pollution, health, refuse disposal, and recreational and open-space needs—these being the kinds of matters that transcend the boundaries of individual local units and which are being handled with only partial effectiveness in urban areas and regions because, among other reasons, legislative authority to prescribe new governmental forms is either absent or unclear, or because long-standing constitutional provisions actually stand as barriers to any direct action at all.

There are those who hold that the issue really turns on the necessity for the constitution to authorize the legislature to create or establish a specified additional or *new* class of local government unit. They argue that this is necessary to overcome the implied present restriction which limits local government units to counties, cities, boroughs, and townships. This is essentially the direction taken in the draft proposal to the Maryland Constitutional Convention where, in Sec. 7.03, upon legislative establishment of the boundaries of a

region, a popularly-elected representative government and instrument of government may be provided either by the legislature, the counties within the region, or a majority of the voters within the region.

The constitutional issues arising from an authorization for legislative establishment of regional governments, metropolitan councils, federation, or area service districts would be complex indeed in the absence of power on the part of the General Assembly to otherwise modify or change the powers of local units, to provide for transfers of functions, or to invest the power to tax in a new unit of local government. (The latter consideration would almost certainly require a representative, popularly-elected governing body in view of the strictures of present Article III, Sec. 31.) On the other hand, much of the complexity would disappear, it is claimed, if the principle of residual powers, discussed earlier, were to be incorporated into the constitution.

Advocates of the area government authorization argue strongly that it must not be confused with what they consider the entirely separate issue of the consolidation or dissolution of existing units of local government. They see no justification in the charge that a limited-function area level of government threatens the continuance of existing local units, and they point to the arrangements in operation in Dade County (Miami), Toronto, and Los Angeles County, as evidence to the contrary.

There is, of course, the view that constitutional recognition of the area issue need not take these forms. The argument has been advanced that a rational, constructive constitutional resolution of the *annexation* issue would be a major step toward meeting the problem of area governmental authority. The heretofore cited exhortation of the American Municipal Association draft "that the legislature shall, by such law, facilitate the extension of municipal boundaries to the end that municipal territory may readily be made to conform to the actual urban area" is a case in point, and the argument outlined above for a constitutional mandate to the legislature to establish a boundary commission, is another.

Other approaches also have their adherents. A specific authorization to the legislature to provide methods for the consolidation and dissolution of municipalities; the removal of restrictions on, or a specific authorization for, the transfers of powers among classes of local units; constitutional standards of population, or otherwise, for the incorporation of municipalities; urban county home rule authorizations; and removal of requirements for the consent of the electorate in boundary adjustments, have all been advanced in one form or another as appropriate and desirable constitutional approaches which would assure legislative flexibility in meeting the issue of adjusting area governmental responsibility to area governmental needs.

While it may be that the authority device in Pennsylvania had its initial impetus in the need to find a way to finance municipal projects not otherwise supportable within existing constitutional debt limits, the fact is now, as made clear in Chapter Two, that the authority has become a substantial multi-

purpose means of adjustment to area-wide functions and needs. This point does not seem to be in significant contention in the argument between those who defend and support the extensive use of authorities in Pennsylvania, and those who attack it on a variety of grounds.

In summary, if there does in fact exist a constitutional quest for recognition of the area issue, it appears to be in the direction of assuring maximum flexibility to meet changing conditions and requirements for achieving that delicate balance between the legitimate and rightful interests of local units and the equally legitimate and rightful interests of the area or region, to the end that a sharing of power between the state, on the one hand, and local government, on the other, can effectively serve the people of the Commonwealth as a whole.

LIMITATIONS ON LOCAL DEBT

The primary issue of concern to constitutional convention delegates involves the means most appropriate for the regulation and control of municipal indebtedness. In the judgment of the delegates, will municipal credit be preserved and responsible fiscal management occur if provisions similar to those now found in the Constitution are retained, or would these necessary elements more appropriately be handled by the General Assembly, or by vesting such powers in local government itself? Peripheral issues involve determinations as to the role of the electorate in the borrowing process, the need for flexibility to permit local governments to meet changing demands, and the role of quasi-public agencies (municipal authorities) in issuing revenue bonds.

There is no agreement on the issue of changing the State's constitutional restrictions regulating local borrowing. Those who oppose any constitutional limitation change believe that greater flexibility is required to enable local governments to provide the capital improvements necessary in an urban society. Therefore, they argue that restrictions, if needed, should be statutory and not constitutional in nature. The Pennsylvania Local Government Conference, the Pennsylvania League of Cities, and the Pennsylvania Association of Township Commissioners, for example, are three state-wide organizations which are advocating this alternative approach. Few, if any, organizations suggest granting to local governments sole authority to regulate their indebtedness practices and procedures.

The continuance of constitutional restrictions has been proposed by the Woodside and Scranton Commissions and by such organizations as the Pennsylvania Bar Association, the League of Women Voters, and the Pennsylvania Municipal Authorities Association. Those suggesting the retention of constitutional debt limitations recognize that local jurisdictions need legal authority to borrow money. However, they are of the opinion that constitutional restrictions are necessary to protect municipal credit and that the necessary protection cannot be afforded by the legislature, which is often susceptible to pressures.

Ways and means to deal with debt limitation vary considerably, and these suggestions directly affect local borrowing capabilities. The Scranton and Woodside Commissions proposed no maximum constitutional limitation, but their recommendations require a local referendum after debt has reached a certain percentage of the value of taxable real property. Their proposals, however, would permit the General Assembly to prescribe additional restrictions; therefore, maximum limitations can be imposed by statute. The Authorities Association, as does the Bar Association, suggests retention of the present rate limitations. Associated with the type of restriction proposed are additional issues affecting local jurisdiction legal capacities to incur debt for capital purposes. These additional issues involve: the base to be used for determining borrowing capacity, the validity of uniform debt limits for all classes of political jurisdictions, and the exclusion from the borrowing restrictions of debt incurred to finance self-sustaining or revenue producing projects.

Although most states restrict local indebtedness to a percentage of the assessed value of taxable real property, the trend is to use fair or market valuation as a basis. With property being assessed at much less than 50 per cent of its value, a debt limitation based upon market, rather than assessed, value would increase significantly a political subdivision's borrowing capacity. Because of the changing nature of the local government revenue base (e.g. increasing dependence upon grants-in-aid, service charges and non-property taxes) various proposals have been made suggesting a debt limitation based upon a jurisdiction's total ability to finance debt. As yet, no state has granted any of its local governments authority to incur indebtedness on the basis of total local revenue. A principal argument against such an approach is that non-property tax revenues generally are not as stable as the real property impost. Another factor influencing the flexibility of local borrowing capacity relates to the authorized rate limit. Pennsylvania is one of the few states which has a uniform or single rate limit applicable to all jurisdictions (except Philadelphia). Other states have adopted schemes of varying rate limits, depending upon the class or type of local jurisdiction. The Woodside and Scranton Commissions recommend the retention of the State's present uniform plan. Similar proposals have been made by the Bar and Authorities Associations.

At least one organization, the Pennsylvania Economy League, is critical of this approach and suggests a rate limitation scheme which varies according to the capital needs of jurisdictions. This approach entails problems of developing need criteria so that the limitations realistically reflect current and probable needs. A third approach to the issue of rate limitation involves the imposition of a ceiling on total overlapping local debt. At present, the Commonwealth has no such restriction. Each class of political subdivision, acting independently of others, may increase its indebtedness to the maximum authorized rates. Control of overlapping local debt by restricting the total rate may

afford taxpayers protection against excessive debt burdens and such a constitutional requirement may result in the legislature adopting a policy of allocating, on the basis of need, individual rate limits for each class of political subdivision. But such an approach might also result in a debt structure which is unrealistic and unrelated to needs.

The practice of issuing bonds to finance projects or facilities which are, or become, self-sustaining raises two questions: Should bonds issued by general purpose governments (counties, cities, boroughs and townships) for such projects be considered as "municipal debt" and subject to constitutional restrictions? Should obligations issued by municipal authorities be subject to constitutional control or limitation?

At present, the State's Constitution (Article IX, Sections 8, 15, and 19) excludes from the limitations indebtedness incurred by select classes of political subdivisions to finance certain self-supporting projects.

The justification for excluding debt of this type from constitutional control is that the indebtedness will not be paid from a jurisdiction's general revenues but rather from the facility's earnings.

Generally, advocates for the constitutional limitation of municipal indebtedness agree that obligations issued to finance self-supporting projects should not be considered as municipal debt and should not be subject to constitutional restriction.

There is a lack of agreement over the matter of authority obligations. The Bar and Municipal Authorities Associations want the *status quo* maintained. The Woodside and Scranton Commissions propose that authority bonds, the repayment of which will be made either directly or indirectly from a political subdivision's general revenues, be considered with the constitutional debt limitations. Whether the *status quo* should be maintained or whether restrictions, however limited, are appropriate, is basically a judgment matter involving such determination as the role of the authority mechanism in our communities (particularly as a means to provide inter-municipal services), and the need for general purpose governments to have broad power to issue obligations in addition to those subjected to constitutional limitations.

SINGLE LOCAL GOVERNMENT ARTICLE

Proposals to consolidate and amend the several articles and sections of the Constitution of 1874 which pertain to local government include those of the Scranton Commission, the Pennsylvania Bar Association, Senate Bill 537 of the 1965 session of the General Assembly, and House Bill 15 of the 1966 session.

The argument for a single Local Government article appears reasonable, and no record of opposition has been presented to the Preparatory Committee. In the interests of clarity and simplicity a single article would be of distinct advantage, and there seems to be no doubt that the Constitutional

Convention could take such a step inasmuch as Act 2 specifically directs recommendations on the "subject of local government" as covered by the articles and sections specified in Section 7 of the Act.[14] The pertinent language of Section 7 relevant to the issue of a consolidated article is, "In dealing with the subject matter as prescribed by this section, the convention may recommend the *transfer* to another article of any provision contained in those articles . . . " (Emphasis supplied)

Irrespective of, and quite aside from any revisions to be recommended by the Convention in Articles XIII, XIV, and XV and in Sections 7, 8, 10, 15, and 19 of Article IX, it seems clear that the Convention could recommend the transfer and consolidation of any or all of them into a single Local Government article. Whether or not this would be the expedient thing to do might depend on the nature of the revisions to be recommended in the several articles and sections, and on the form of the question or questions to be submitted to the electorate.

In any case, if the Constitution of Pennsylvania were to include a Local Government article embracing provisions pertaining directly to the subject area, it would be adopting a pattern in common use in other state constitutions and in accord with the models of the American Municipal Association and National Municipal League.

As an illustration of two rather different approaches to the organization and coverage of subjects in a Local Government article, the proposals presented to the Preparatory Committee by the Pennsylvania Bar Association[15] and the draft submitted to the Maryland Constitutional Convention by the Convention Commission[16] may be cited. The relatively brief article proposed by the Bar Association contains three main divisions—Counties; Cities and Boroughs; and Municipal Finance, divided respectively into four, one, and three sections for a total of eight. The Maryland draft proposal is also quite brief, with two short introductory sections on definitions of local units and the establishment of counties and multi-county units, and five main divisions, as follows—Regional Governments and Intergovernmental Authorities; Counties; Credit Limitations; Municipalities; and Cooperative Agreements, divided respectively into four, six, one, one, and one sections for a total of thirteen.

The point, of course, is not the difference between those two proposals in the number of their main headings and sections, but in the rather striking contrast between them in the subject captions for the contents of the article. The quick impression is that the Maryland proposal attempts to cover the subject of local government more comprehensively than the draft by the Bar Association. After a full reading of both, there may be differences of opinion on this point, but by including such subject areas as it does, the Maryland proposal would probably be commended by a large number of writers, authorities, and organizations who believe that a constitution should reflect a unified theory or concept of sub-state government which, by definition, is local.

While some may view the issue of a single article as a purely mechanical and artificial technique without meaning except in its substantive content, others view the fact of a consolidated article as *prima facie* evidence of the constitutional importance of local government, with the clear implication of the dignity of the same separate and distinct treatment accorded to other areas of major constitutional concern.

In summary, the Constitutional Convention has precedent in the constitutions of other states for a single Local Government article; specific proposals for Pennsylvania have been made which can be compared with other current ones in at least one other state; and while all matters relating to local government may not be embraced within the limitations of Act 2, it would seem to be without question that the Convention could draft a unified and co-ordinated article following any guidelines it should choose to adopt. Perhaps those suggested by a constitutional commission in a neighboring state some years ago are as good as any. In speaking of the minimal requirements for an article on Local Government, the commission said: "1. It should promote local self-government by providing for a broad unambiguous grant of power to local governments that will stimulate initiative and vigor in meeting new and expanding responsibilities. 2. It should permit maximum intergovernmental co-operation in meeting problems that cannot be handled properly by each local government acting alone. 3. It should free the legislature of the burden of acting on hosts of local bills so that it may concentrate on matters of importance to the whole state."[17]

Notes to Chapter 3

1. Bromage, Arthur W., "Home Rule as of Now," *National Civil Review*, July 1964, p. 365 ff.
2. "Model Constitutional Provisions for Municipal Home Rule," American Municipal Association, Chicago, 1953
3. "Model State Constitution," National Municipal League, Sixth Edition, 1963
4. American Municipal Association, op. cit.
5. American Municipal Association, op. cit., Sec. 2
6. Constitution, State of Alaska, 1956, Article X, Sec. 1
7. "Interim Report of the Constitutional Convention Commission," State of Maryland, 1967, p. 175
8. State of Alaska, op. cit., Article X, Sec. 12
9. "The American County Platform," National Association of Counties, in *American County Government*, January 1966
10. "An Urban Home Rule Charter for Allegheny County," Metropolitan Study Commission, 1955
11. See Testimony of Pennsylvania State Association of Elected County Officials, Preparatory Committee Hearings, July 27, 1967
12. Constitutional Convention Commission, op. cit., p. 180
13. Representative, relatively non-technical discussions of the area problem may be found in: "A Symposium on Metropolitan Regionalism: Developing Governmental Concepts," University of Pennsylvania Law Review, Vol. 105, No. 4; "1961 Report of the Joint Legislative Committee on Metropolitan Areas Study," Legislature of the State of New York,

1961; "Alternative Approaches to Governmental Reorganization in Metropolitan Areas," Advisory Commission on Intergovernmental Relations, Washington, 1962
14. Act 2 of the 1967 General Assembly, approved March 15, 1967
15. "Proposal of the Pennsylvania Bar Association Relative to Local Government," Preparatory Committee Hearings, July 14, 1967
16. Constitutional Convention Commission, op. cit., Article VII
17. "The 1959 Report of the Temporary Commission on Revision and Simplification of the Constitution," State of New York, Albany, p. 15

CHAPTER 4

Alternatives for the Revision of Existing Local Government Provisions of the Constitution of 1874

The purpose and intent of this Chapter is to provide not only a ready reference for the content, background, and interpretation of the existing constitutional provisions relating to local government, but also a condensed summary, for each relevant article and section, of the views and proposals for revision advanced by prior Pennsylvania constitutional commissions, national authorities and organizations, and parties appearing in the public hearings conducted by the Preparatory Committee.

In addition, wherever it has seemed appropriate, comparable or relevant sections of other state constitutions are cited, not for the purpose of endorsing or recommending them as preferable to the existing provision of the Constitution of 1874, but solely for the purpose of providing the Convention with illustrative and varying approaches to the particular constitutional matter at issue.

While this approach may have the disadvantage of making it somewhat more difficult to get an over-all view of the problem of revision of the constitutional provisions concerning the subject of local government, particularly of the desirability of a single article on Local Government, it does have the distinct advantage of enabling the delegate to refer to the individual sections of each existing article for both historical background and alternatives for amendment, repeal, transfer to another article, or complete revision.

Article XIII

SECTION 1[1]—NEW COUNTIES

Present Provision

No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand in-

habitants; nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

Historical Note

The first Pennsylvania constitution of 1776 authorized the General Assembly to "constitute towns, boroughs, cities, and counties" (Section Nine). No limitations in this regard were established.

The next Pennsylvania constitution (1790) eliminated this provision. Since 1790, the authority of the General Assembly in this regard has rested on the general powers of the state legislature to deal with any matters not prohibited by the federal constitution or by specific limitations in the state constitution. This is under the concept of a state constitution being an instrument of either "restraint" or of "directing" rather than a "granting" instrument.[2]

The third Pennsylvania constitution in 1838, like its predecessor of 1790, contained no specific authorization for, or restrictions on, the General Assembly with respect to creating counties. However, an amendment in 1857 provided that

> No county shall be divided by a line cutting off over one-tenth of its population (either to form a county or otherwise) without the express consent of such county, by a vote of the electors thereof, nor shall any new county be established containing less than four hundred square miles.

This 1857 provision was retained with several modifications in the 1874 Constitution. The modifications consisted of (1) eliminating the "one-tenth of its population" restriction, (2) adding a minimum population of 20,000 for a county, and (3) adding a geographical limitation of new boundaries at least ten miles from the county seat of a county to be divided, and (4) eliminating the previous opportunity for the electors to make a decision on the question. No changes in the present provision have been made since its adoption in 1873.

Interpretation of Provision

The meaning of the present provision is self-evident. Its purpose (and that of its predecessor in the 1857 amendment to the 1838 Constitution) was to put an end to previous practice of the General Assembly in creating new counties by special acts for the benefit of real estate speculators. A related constitutional provision was added in the Constitution of 1874 which prohibited the General Assembly from passing local or special laws with respect to (among other things) "locating or changing county seats, erecting new counties or changing county lines" (Article III, Section 7). This

provision was retained in the amended Article III, adopted in 1967 (Section 32, 3).

Fourteen of Pennsylvania's present 67 counties were established in the period 1825–1857, six in the period 1847–1857. Only one (Cameron, in 1860) was established in the period 1858–1873. Only one (Lackawanna, in 1878) has been established since 1873.

The provisions obviously were effective in curtailing the creation of new counties. With respect to present conditions, twelve counties have an area of *less* than 400 square miles; 23 counties have area in excess of 800 square miles (sufficient to meet the minimum area requirements if they were divided); only 6 of the 23 lack the 40,000 population sufficient to meet the minimum population for new counties if they were divided. A major obstacle to establishing new counties under the present constitutional provision is the requirement that no new boundary line shall fall within ten miles of the county seat of any county proposed to be divided. The county seats of the present counties are generally centrally located, making it impracticable to establish new units meeting the requirements for area and population without first changing the location of any present county seats involved. As noted above, the General Assembly is prohibited (under present Article III, Section 32, 3) from dealing with the location of county seats or changing county lines except by general laws.

Comment

There appears to have been little organized specific criticism of the present provision since its adoption.

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report[3] recommended three substantive changes in the provision as follows:

1. Reducing the 400 square mile requirement to 300 square miles;
2. Increasing the population requirement from 20,000 to 50,000;
3. Requiring the consent of a majority of the electors voting on the question within the boundaries of a proposed new county.

The Commission gave as its reasons for the proposed changes (1) the increased state population since 1874, and (2) a belief that the General Assembly should not change the boundaries without the approval of "those most affected."

The Earle Committee report made no comments on this subject.

The Woodside Commission in 1959 expressed no criticism of the present provision and recommended no change.

The Scranton Commission suggested no change in the wording of the present provision, although the Commission suggested that it be consolidated as Section 1 of a new Article on Local Government.

National Authorities and Organizations.

Little direct current criticism of the present provision is apparent within the limited scope of its content. The intent of the provision was to discourage further subdivision of counties. The weight of criticism of county government boundaries in the past thirty or more years has been in the direction of removing constitutional limitations on the authority of the General Assembly to deal with local government boundaries and a need expressed by such authorities to reduce the number of counties by consolidation into larger units.

For example, the recent report on *Modernizing Local Government* by the Committee for Economic Development (CED) made the following recommendation:

> . . . the 2,700 counties outside metropolitan area [should] be consolidated into no more than 500 strong and effective units—using such criteria as minimum population, accessibility to the county seat, trading and communications patterns, revenue base, and geography.[4]

The CED had no specific proposals on criteria to be used, but suggested that each state should revise its constitution to modernize the forms and powers of local government and that boundary commissions should be established to deal with the subject of local government boundaries. "Such commission would have authority to act on all petitions for creation of new local units, as well as on boundary revisions of present incorporated and unincorporated units . . ."[5]

The various editions of the Model State Constitution, prepared at periodic intervals by distinguished scholars under the sponsorship of the National Municipal League, have consistently over the past 30 years recommended against constitutional restrictions with respect to local government boundaries, recommending only that such matters be handled by the state legislatures under general laws.

Thus, in the most recent revision of the Model (1963), the view is expressed that "freedom from excessive constitutional structures would permit the legislature and the localities working together, to reorganize counties, consolidate local governments and create federated communities if such action can best serve urban age needs."[6]

Other States.

Some state constitutions are silent in this matter. This is the case, for example, in New Jersey and North Carolina, although New Jersey's constitution prohibits the Legislature from adopting special or local laws "regulating the internal affairs" of the counties; no such restriction is found in North Carolina.

Some states (e.g., Ohio) are more restrictive than Pennsylvania inasmuch as the formation of new counties is not only subject to minimum area and/or population standards, but also because the action must be

ratified by vote of the people affected. Other states (e.g., Minnesota) have a referendum requirement but without the specification as to minimum size or population. Still others (e.g., Florida) give the Legislature the power to form new counties.

Numerous states (e.g., Georgia) give the Legislature the authority to merge counties, subject to referendum. Some states (e.g., Michigan) directly authorize two or more contiguous counties to combine into a single county, subject to referendum.

Alaska provides for boundary commissions which may mandate changes in county ("borough") boundary lines, subject to veto by the Legislature.

Preparatory Committee Hearings and Other.

Opposition to *any* change in the present constitution as it relates to County government was expressed by several Pennsylvania associations of county officials, namely, (1) Prothonotaries and Clerks of Courts, (2) Register of Wills and Clerks of Orphans Courts, (3) Coroners, and (4) Controllers.

The Pennsylvania Bar Association suggested no change in the wording of the present provision although it suggested that it be consolidated as Section 1 of a new Article on Local Government.

Expressing the view that many Pennsylvania Counties are too small, the Southeastern Pennsylvania Chapter of the Americans for Democratic Action proposed giving the Legislature the power to create and divide counties, subject to referendum, provided that no county shall contain less than 50,000 population.

Alternatives and Proposals

Other State Constitutions

Sec. 30. **New counties.** No new county shall contain less than four hundred square miles of territory, nor, shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided, whenever a majority of the voters, residing in each of the proposed divisions, shall approve of the law passed for that purpose; but, no town or city within the same, shall be divided, nor, shall either of the divisions contain less than twenty thousand inhabitants.

Ohio, Article II

Sec. 1. **Legislature to provide for local government units.** The legislature may provide by law for the creation, organization, administration, consolidation, division, and dissolution of local government units and

their functions, for the change of boundaries thereof, for their officers, including qualifications for office, both elective and appointive, and for the transfer of county seats. No county boundary shall be changed or county seat transferred until approved by a majority of the voters of each county affected voting thereon.

Minnesota, Article XI

Section 7.02. **Establishment of Counties and Multi-County Governmental Units.**

The General Assembly may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of counties and multi-county governmental units, including intergovernmental authorities and popularly elected regional representative governments, but excluding municipal corporations. A law altering the boundaries of a county shall be enacted only by the affirmative vote of at least three-fifths of all the members of each house.

Maryland, Proposed Article XII

Sec. 13. **Merger of counties.** Two or more contiguous counties may combine into a single county if approved in each affected county by a majority of the electors voting on the question.

Michigan, Article VII

Sec. 3. **Consolidation of counties; allocation of liabilities.** Two or more counties may be consolidated by vote of a majority of the qualified electors voting thereon in each county affected, but no such vote shall be taken more than once in five years. The former areas shall be held responsible for their respective outstanding liabilities as provided by law.

Sec. 4. **Division or diminution of counties.** No county shall be divided or have any portion stricken therefrom except by vote of a majority of the qualified electors voting thereon in each county affected.

Sec. 5. **Dissolution of counties; annexation.** A county may be dissolved by vote of two-thirds of the qualified electors of the county voting thereon, and when so dissolved all or portions thereof may be annexed to the adjoining county or counties as provided by law.

Sec. 6. **Removal of county seats.** No county seat shall be removed except by vote of two-thirds of the qualified electors of the county voting thereon at a general election, but no such vote shall be taken more than once in five years.

Missouri, Article VI

National Authorities and Organizations.

Article VIII, Local Government, Section 8.01, **Organization of Local Government.** The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil division and of

altering their boundaries . . . [the provision continues with matters of classification, and optional plans of organization and charters].

National Municipal League, *Model State Constitution*, Sixth Edition. 1963.

Pennsylvania Proposals

Section 4. A new county shall not be established if it would have less than three hundred square miles and fifty thousand inhabitants or if a line thereof would pass within ten miles of the boundary of the county seat of a county proposed to be divided or if its establishment would reduce another county below such area or population. A new county shall not be established without the consent of a majority of the electors resident within the proposed boundaries thereof voting on the question.

Sproul Commission (1920)

Counties shall be created by the Legislature and may be divided by it from time to time with the approval of the residents affected except that no county shall be created which shall contain at the time of its creation fewer than 50,000 residents.

Southeastern Pennsylvania Chapter 5
Americans for Democratic Action.

Article XIV—County Officers

SECTION 1—COUNTY OFFICERS ENUMERATED

Present Provision

County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys and such other officers as may from time to time be established by law; and no treasurer shall be eligible for the term next succeeding the one for which he may be elected.

Historical Note

This provision appears for the first time in its present form (except for an amendment in 1945 which deleted a prohibition on the sheriff serving two successive terms) in the constitution of 1874.

Sheriffs and coroners were the principal county officers given constitutional status in earlier constitutions. Under the constitutions of 1776 (Section 31) and 1790 (Article IV, Section 1) two candidates for each office were elected (actually, nominated, as we know the word today) in each county from which the Governor (President of the Executive Council in the 1776 Constitution) selected the person to serve. Selections were made annually, and the sheriff was barred from serving more than three consecutive annual terms.

The constitution of 1776 provided that "commissioners and assessors, and other officers chosen by the people shall also be . . . elected, as has been usual heretofore, until altered or otherwise regulated by the future legislature of this state" (Section 31). This provision was dropped in the constitution of 1790. Such court recording and administrative officers as prothonotaries, registers of wills, recorders of deeds and clerks of the courts were mentioned in the constitutions of 1776 and 1790. These officers were appointed by the General Assembly under the constitution of 1776 (Section 34); under the constitution of 1790 their selection was left to the Governor under a provision authorizing the Governor to appoint all other officers whose selection was not specifically provided elsewhere in the constitution (Article II, Section 8).

In the constitution of 1838, a separate Article (VI) was established for sheriffs and coroners (although the substance of the Article included other officers). Section 1 of this article provided for the first time for direct election of sheriff and coroners. Section 3 of the same Article provided for the first time for the election by the voters of prothonotaries and clerks of the several courts, recorders of deeds, and registers of wills.

Such county administrative officers as commissioners, treasurers, surveyors, auditors and controllers were not mentioned in the constitution of 1838, being covered by a general statement in Section 8 of Article VI that "all officers whose election or appointment is not provided for in this constitution shall be elected or appointed as shall be directed by law."

The office of county commissioner was first established as an elective office by the Provincial Council in an Act of 1724–25. The function was to determine the "county charge" and levy taxes in the county. County auditors were established in an Act of 1791 which required the Court of Common Pleas to "appoint three persons annually to settle accounts of commissioners and treasurers." The office was made elective in 1809.

The first general legislative act providing for the government of counties and townships was a general incorporation act of 1834. Elected county officers were to consist of three commissioners serving three year terms, with one elected every year, and three auditors, for a like period with overlapping terms. The county commissioners were authorized to appoint annually a county treasurer, but no treasurer could serve more than three consecutive years in any six year period. The office of county treasurer was later (in 1841) made an elective position.[7]

The framers of the constitution of 1874 wrote into the constitution a statement covering the officers of county government as then existing.

Interpretation of Provision

The purpose of the provision was to prevent any legislative tampering with the officers of county government as then existing, and (as provided in subsequent sections) to maintain them as elective officers. As stated in the *Debates of the Constitutional Convention* (Volume IV, page 774), "the com-

mittee was unanimous in declaring that there should be no change made in these peculiar officers; that they should exist as the people now understand them .... We should not make an innovation."

Restrictions on sheriffs and treasurers serving successive terms of office were written into the 1874 constitution: the former continuing a practice that had existed in the constitution of 1776, the latter a practice that had long been required by statute. The purpose was to force a turnover in these two offices, both of which handled large sums of money, and the sheriff being the most powerful county officer in the 18th century. The restriction on the sheriff was eliminated by an amendment in 1945. A proposal to eliminate such a restriction on the treasurer was defeated in a referendum in 1961.

The term "Auditors or controllers" is used in the constitution in recognition that by 1874 two counties (Philadelphia and Allegheny) had been authorized by statute to substitute a controller for a board of auditors. Under the provision the General Assembly may authorize (and has) either or both systems of providing for the audit function in county government.

Although the constitution prescribed that the enumerated officers shall exist in county government, it is silent on their duties, and the General Assembly is authorized to create "such others as may from time to time be established by law."

Under this provision the General Assembly would appear to have considerable freedom to reorganize the organization of county government by establishing new positions and altering the functions and powers of such offices as county commissioner, auditors and/or controllers, sheriffs, coroners, and the various court clerks and recording officers. However, such action would be subject to judicial review and influenced by the constitutional status of elective officers and by the long tradition of common law and statutory practice with respect to the offices involved. (It should be noted here that statutes are generally held to be of superior authority to common law, one of the functions of statutes being to provide exceptions from common law or tradition.) There appears to be no Pennsylvania judicial interpretation in point on this question. The existing provisions, thereby, provide a restraint on the General Assembly in restructuring the organization of county governments.

Comment

Criticism of the present provision has been prevalent over the past 40 or more years, hinging upon the merit or lack of merit in enumerating specific officers of county government in state constitutions.

Prior Pennsylvania Commissions.

The Sproul Commission on Constitutional Amendment and Revision approved in its 1920 recommendations a provision basically similar to the present provision.

The Earle Committee report proposed that the number of constitutional county officers should be substantially reduced.

The Woodside Commission, in its 1959 report on a recommended new constitution, designated a change in the present provision to be of "Class 1" importance—amendments which the Commission deemed to be of the first importance, "critically needed for the efficient conduct of the state government, and which the Commission strongly urges the General Assembly to approve."[8]

The Woodside Commission proposed giving the General Assembly the power to provide for optional plans of county government, thereby extending a measure of home rule to the counties. The Commission argued that "the detailed enumeration of the county 'row offices', the provisions to regulate compensation and to provide for accountability and attendant details are statutory in nature and need not be set forth in the general framework of the Constitution. The present county long ballot, which means great rigidity and diffusion of responsibilities in county government, leaves little room for constructive development in county organization."[9]

The Scranton Commission endorsed the Woodside proposal.

National Authorities and Organizations.

Among the most authoritative resources available are the series of Model State Constitutions prepared by the National Municipal League, through committees of recognized scholars throughout the country. The various editions of the Model over the past 30 years have been consistent in recommending (1) against detailed specification of county officers in constitutions, and (2) giving the legislatures the constitutional authority to provide optional laws for the organization and government of counties, including an option for "home-rule" charters adopted by the voters of individual counties concerned.

The Advisory Commission on Intergovernmental Relations (a permanent, bipartisan body established under federal legislation enacted in 1959, and consisting of members representing the legislative and executive branches of the three levels of government and the public at large) has endorsed optional forms of county government and maximum local responsibility and citizen participation in the governmental process. In the 1967 state *legislative* program of the Commission, the following observations are made on goals for county government:

> The variation in social and economic conditions and the history of local government across the nation militate, quite properly, against any suggestion of a single ideal structural form of local government. Regardless of the form of local government . . . one thing appears certain; namely, that maximum local responsibility and maximum citizen participation in the governmental process can best be assured if the people themselves have a broad range of discretion in determining what form of local government is in their best interest . . .[10]

The Commission recommended a format for state legislation authorizing and establishing a variety of optional forms of county government. Such

legislation would, of course, depend upon constitutional authority to provide such options.

The opinion of national authorities and organizations is decidedly in favor of not only flexibility with respect to the organization of county government, but greater powers for county government in coping with local government problems and broad powers for cooperative action, both intra-county and inter-county.

The National Association of Counties in a 1965 policy statement "asserts its belief that counties are no longer merely local branches of the state government." The statement goes on to say that "as the local government that reaches all the people, the county must be granted flexibility of power and strength of authority through local authorization to face the respective problems of each local community." The policy statement advocates effective home rule for county government including the right for each county to devise its own internal organization under a charter or general laws, and to devise its own operating policies in all programs not financed wholly or substantially by federal or state funds. The Association states that "county general law should provide for flexibility wherever possible" and recommends that the states, "by popular referendum, in their constitutions grant to selected units of local government all functional and financing powers not expressly reserved, preempted, or restricted by the legislature."[11]

Other States.

Almost all of the state constitutions have something to say in the area of designating county officers, although the manner in which the subject is covered varies considerably. New Jersey, for example, makes specific provision only for county prosecutors, clerks, surrogates, and sheriffs. The Legislature is forbidden to pass special or local laws "regulating the internal affairs of . . . counties" except on petition of the county governing body, then passage by an extraordinary majority (⅔ of all members) of both houses of the Legislature, and finally approval by the governing body or voters of the county.

Minnesota provides that the Legislature "may provide by general law for the creation, organization . . . of local government units and . . . for their officers."

Some states (e.g., Kansas) stipulate that the Legislature shall provide for such county officers as may be necessary. Wyoming has a similar provision, including the mandate that "the legislature shall provide by law for the *election* of such county officers as may be necessary." (Emphasis supplied.)

South Dakota gives the Legislature the power to provide by general law for county officers; specifies the election and term of certain county officers; and permits the county commissioners to combine, subject to referendum, two or more county offices into one elective office.

Several states grant their counties home rule powers in one form or another. For example, the new (1963) Michigan constitution specifically

authorizes counties to adopt home rule charters pursuant to state law. The constitutions of California and New York contain provisions as to permissible alternative forms of county government that may be adopted by an individual county within the state.

Ohio, in addition to providing for home rule counties, also stipulates that, for non-home rule counties, the Legislature shall provide "by general law for the organization and government of counties, and may provide by general law alternative forms of county government." An alternative form could be adopted by a county only through referendum.

A number of state constitutions (e.g., Alaska) make special provision for coping with urban problems within a county or, as in the Michigan constitution, in inter-county areas. (See discussion, in Chapter Five, on interlocal relations.)

As to powers of county governments, some states (e.g., New Jersey) specify that the provisions of the constitution shall be liberally construed in the favor of counties (and other local governments).

With respect to Pennsylvania's limitation on successive terms for a county treasurer, only four other states (e.g., Illinois) have such a restriction. Other states which specifically provide for a county treasurer either mandate the periodicity of the election (e.g., Arizona) or permit the Legislature to do so (e.g., Washington).

Preparatory Committee Hearings and Other.

Opposition to *any* change in the present constitution as it relates to County government was expressed by several Pennsylvania associations of county officials, namely, (1) Prothonotaries and Clerks of Courts, (2) Register of Wills and Clerks of Orphans Courts, (3) Coroners, and (4) Controllers.

The statewide Sheriff's Association noted that the present form of County government has been in existence since the Constitution of 1874 with only slight changes. It is therefore obvious, the Association concluded, that the "present Constitution is sufficient." Accordingly, it urged the retention of the present sections of the Constitution "insofar as they relate to the designation and election of County officials."

Although the views of the Pennsylvania State Association of Elected County Officials focus on preserving the election requirements of Article XIV, Section 2 (discussed below), it advocated that Article XIV, Section 1 be amended to permit County Treasurers to serve successive terms and to abolish the office of County Surveyor.

The proposals of the Pennsylvania Bar Association contain language similar to that proposed by the Woodside Commission (discussed above) and for the same reasons. The Bar Association also added language to apply in instances where all of the political subdivisions of a county could be eliminated in favor of a single county government with the consent of a majority vote of the electors in each of the political subdivisions. The latter provision was

intended to replace a present provision (Article XV, Section 4) of this nature applying only to Allegheny County.

The League of Women Voters supported measures to permit all local governments to frame their own charters, subject to voter approval, and that optional forms of county government should be available. In general, the League endorsed the language of the Bar Association proposals.

Pointing to the "utterly antiquated and hopelessly inefficient structure of county and local government in Pennsylvania," and the county "three headed governmental structure with its wasteful appendages of elected row officers and inefficient patronage employees," the Southeastern Pennsylvania Americans for Democratic Action recommended that the Constitution provide specifically for the structure of county and local government and further provide a home rule option for such governments within certain delineated boundaries.

A Modern Constitution for Pennsylvania, Inc. proposed that steps be taken to encourage home rule action by *mandating* the Legislature to provide optional forms of government for counties (and other local governments), rather than merely *permitting* the Legislature to do so, as proposed by the Bar Association. (The MCP's related proposals with respect to consolidating local governments are set forth below in connection with Article XIV, Section 8.)

The Home Builders Association proposed that more powers be concentrated at the county level.

The Pennsylvania Local Government Conference noted that Pennsylvania "local governments" traditionally have been subject to the judicial principle referred to as "Dillon's Rule." This provides that local governments may exercise powers only specifically granted to them by the state constitution or by legislation. The Conference recommended that the constitution be amended to incorporate the principle that "*cities, boroughs, townships, and towns* shall have all residual functional powers of government not denied by this constitution or by law." (Emphasis supplied.) Thus, the Conference's recommendation did not extend to county governments.

A recent Resolution by the Commissioners of Luzerne County, in establishing a Personnel Merit System, stated: "County government in Pennsylvania is not geared effectively to administer the accumulation of traditional functions, the more modern services which have been added in recent years, nor the greatly expanded responsibilities which appear on the horizon. Rigid constitutional provisions which have outlived the agricultural era and an accompanying lag in legislative changes to modern conditions, have left county government without an efficient organization and effective authority."

The Pennsylvania Economy League (State Division), in a recent study for the Local Government Commission of the General Assembly on the feasibility and problems involved in providing for an office of county administrator in Pennsylvania, commented as follows:

County government is a cluster of independent, unintegrated offices, lacking executive direction and control. Boards of county commissioners more closely resemble what is considered to be a governing body than any of the other elective county officers, but they possess little legislative power as such . . . County commissioners are not empowered to establish an organizational structure best suited to carry on county services and functions in an efficient and economical manner.[12]

Alternatives and Proposals

Other State Constitutions

Sec. 2. **Local self-government; charter.** Each political subdivision (including counties) shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be prescribed by law.

Hawaii, Article VII

Sec. 2. **County and township officers.** The legislature shall provide for such county and township officers as may be necessary.

Kansas, Article II

Section 7.07. **Powers of Counties.**

A county may exercise any power, other than judicial power, or perform any function which is not denied to it by this Constitution, by its charter or by a public general law which in its terms and in its effects is applicable to all counties or to all counties of the county's class, and which has not been transferred exclusively to another governmental unit.

Section 7.10. **Structure of County Governments.**

Within one year following adoption of this Constitution, the General Assembly shall provide by law alternative procedures by which an instrument of government of a county may be proposed: by enactment of the local governing body, by petition of ten per cent of the qualified voters of the county, by board created by enactment of the local governing body or created by the voters of the county approving a voters' petition for such a board, or by such other methods as may be prescribed. An instrument of government shall be submitted for adoption by the affirmative vote of a majority of the voters of the county voting thereon. The General Assembly shall provide by law an instrument of government which shall become effective on the first day of January of the fourth year following the effective date of this Constitution for those counties which have not previously adopted an instrument of government as provided in this section.

Maryland, Proposed Article VII

(For the section relating to multi-county units and regional governments, proposed by the Maryland Constitutional Convention Commission, see Chapter Five, p. 211.)

Sec. 2. **County home rule charters; charter counties, powers.** Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

Michigan, Article VII

Sec. 18(c). **Provisions authorized in county charters; participation by county in government of other local units.** The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality, or political subdivision in the county, except school districts, when accepted by a vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by like vote.

Missouri, Article VI

11. **Liberal construction of constitutional and statutory provisions concerning municipal corporations and counties; powers of counties and municipal corporations.** The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

New Jersey, Article IV

Sec. 10. **County home rule under county charter.** The Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election,

may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern. Local improvements shall be financed only by taxes, assessments or charges imposed on benefited property, unless otherwise provided by law or charter. A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary. Such officers shall among them exercise all the powers and perform all the duties, as distributed by the county charter or by its authority, now or hereafter, by the Constitution or laws of this state, granted to or imposed upon any county officer. Except as expressly provided by general law, a county charter shall not affect the selection, tenure, compensation, powers or duties prescribed by law for judges in their judicial capacity, for justices of the peace or for district attorneys. The initiative and referendum powers reserved to the people by this Constitution hereby are further reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter.

Oregon, Article VI

Sec. 5. **County officers.** The legislature shall provide by law for the election of such county officers as may be necessary.

Wyoming, Article XII

National Authorities and Organizations.

For provisions of the *Model State Constitution,* National Municipal League, Sixth Edition, 1963, relating to the Organization of Local Government, and Powers of Counties and Cities, see this chapter p. 126.

Section 8.04. *County Government.* Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the

county, (2) in any city containing more than twenty-five per cent of the total population of the county, and (3) in the county outside of such city or cities.

National Municipal League,
Model State Constitution,
Sixth Edition, 1963

For residual powers provision relating to counties and municipalities, as proposed by the Advisory Commission on Intergovernmental Relations, see this chapter, p. 116.

Pennsylvania Proposals

Section 2—**Optional Plans of County Government.** The General Assembly shall provide by general law for the government of counties. The General Assembly may by law, applicable to all classes of counties or to a particular class, provide optional plans of county organization and government under which an authorized optional plan may be adopted or abandoned by a majority of the qualified electors of a county voting thereon. One option shall be the form of county government at the time prescribed by law for the particular class of county. Under any plan, the governing body shall be an elective body.

Woodside (1959) and
Scranton (1964) Commissions

Section 2—**Optional Plans of County Government.** The General Assembly shall provide by general law for the government of counties. It may provide by law applicable to all classes of counties or to a particular class optional plans of county organization and government which may be adopted by a majority of the qualified electors of a county voting thereon, and also, if the plan involves the elimination of existing political subdivisions, by a majority of the qualified electors voting thereon in each of a majority of the political subdivisions which would be eliminated. One option shall be the form of county government at the time prescribed by law for the particular class of county. Under any plan, the governing body shall be elective.

Pennsylvania Bar Association,
Project Constitution (also
presented at Public Hearings,
July 20, 1967)

Counties shall be governed by a single elected chief executive and a vice-chief executive and by a legislative council of one or more elected representatives of each municipality which forms a part of such county and as many at-large representatives as the Legislature may determine. Such at-large representation should incorporate the requirement of minority representation.

There shall be elected in each county a District Attorney and a Controller and all other county officials shall be appointed by the chief executive of the county.

All functions of county and local government, including the operation of the schools, shall be the responsibility of the county or local governments as the Legislature may determine, provided however, that should the majority of the voters of any county and of all of the local governmental units therein so determine, any or all local governmental functions may be assigned to the county government and if the voters so determine, local governmental units may be abolished.

The voters of each local government and each county government may modify by referendum the form of their respective governments provided that such modified governments incorporate the principles of an elected chief executive and an elected council as set forth in this Constitution; and the Legislature is empowered to recognize by statute such existing city governments as do so comply as having already exercised such option in whole or in part.

Southeastern Pennsylvania Chapter
Americans for Democratic Action

Article XIV,

SECTION 2—ELECTION OF COUNTY OFFICERS; TERM; VACANCIES

Present Provision

County officers shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies not otherwise provided for, shall be filled in such manner as may be provided by law.

Historical Note

The popular election of county officers was first written into the constitution in 1838. This was one of the goals of the constitutional reformers who pressed for revision. They sought to curtail the appointive powers of the governor, which reached down into the local areas. It was generally charged that the governor used this as a means of guaranteeing his re-election for the period permitted under the constitution. Thus, the change to popular election was not based on democratic theory in regard to the solemn right of the people to choose their own local officers, but was designed to reduce the governor's personal power by removing his local patronage.[13] The new section simply extended the list. The three year term for local officers dated back to the Constitution of 1790. By constitutional amendment of

November 2, 1909, the term of office of the constitutional officers was increased to four years, and the time of election from general to municipal election.

Interpretation of Provision

This provision requires that all of the enumerated officers be elected officials. The reason for this may be attributed to the intention of the Constitutional Convention of 1873 that "no change (be made) in these peculiar officers; that they should exist as the people now understand them."

The emphasis on election is reflected in the Debates of the Convention of 1873 in the statement that:

> The Convention of 1837-38 . . . was called partly for the express purpose of taking from the Governor the appointment of all the officers named in the third section of the sixth article of the Constitution (of 1837, covering prothonotaries, clerks of courts, recorders of deeds, and register of wills). Before that time those officers had been appointed by the Governor. Since that time they have been elected by the people.[14]

An ambiguity exists between the enumeration of county officers in Section 1 and the requirement in Section 2 that county officers shall be elected. Section 1 authorizes the General Assembly to create county officers other than those enumerated; under a strict interpretation of Section 2 such other county officers would have to be elected *officers*. Jurisprudence on this question is ambivalent. A Purdon's citation records contradictory court interpretations.[15] Nevertheless, the weight of jurisprudence and practice appears to limit the election requirement only to those officers specifically listed. Thus, the only present statutory elected officers of county government are jury commissioners. The General Assembly has provided for the appointment of many officers, such as county engineer, chief clerk, prison warden, health director, solicitors, numerous boards and commissions, and other officers, including a chief assessor and assistants (the assessor was once one of the principal elective officers in county government).

Comment

Criticism with respect to Article XIV, Section 2 is related to the general question associated with the enumeration of officers in Article XIV, Section 1, discussed above. Beyond the question of whether or not a constitution should enumerate all of these officers, much of the criticism is directed at the requirement that all of the enumerated officers be elected. The general tenor of criticism is that only the county governing body should be elected and that all of the administrative officers should be appointed officials. The general criticism expressed with respect to Section 1, above, may also be read in connection with Section 2. Listed below are other comments directed solely at the question of election in Section 2.

Prior Pennsylvania Commissions.

The Sproul Commission recommended no material changes in the present provision.

The Earle Committee report proposed that the method of filling vacancies in county offices should be made uniform.

The Woodside Commission (1959) recommended a provision which, in effect, would leave it to the Legislature to determine which county officers should be elective.

The Scranton Commission endorsed the Woodside proposal.

National Authorities and Organizations.

Comments by authorities are cited under Section 1, above, which concern both the enumeration of county officers and the manner of their selection. Criticism on selection centers on (1) the requirements for electing clerks and administrative officers, (2) the long ballot which is said to confuse the voters and diminish citizen interest in elections, and (3) the difficulty of providing or maintaining an efficient and coordinated county administration.

The most recent Model State Constitution suggests that the matter of selecting county officers be left for the General Assembly to prescribe, unless a constitutional provision were to include self-executing authority for locally drafted "home rule" charters, in which case such matters would be left for a county charter commission and the voters of the county to decide.[16]

Other States.

Some state constitutions (e.g., Iowa) are silent in this area. Others (e.g., California) specify that these matters shall be covered by general law although this is sometimes restricted by the requirement (e.g., Ohio) that a term shall not exceed a certain number of years. Still others (e.g., Indiana) specify the election and terms of certain county officers and provide that the Legislature shall determine the election or appointment of other county officers.

In states which permit county home rule (e.g., Minnesota), these matters are determined by the provisions of the home rule charters.

Preparatory Committee Hearings and Other.

Many of the comments summarized above in relation to Article XIV, Section 1 are relevant generally to Section 2, and are not repeated here.

Specifically, however, the Pennsylvania Association of Elected County Officials urged the retention of Section 2. The Association noted that "one factor stands out in bold relief in all county structures of this country, that is here, more than anywhere else, the citizenry is given the full authority of electing its own government, selecting those they feel best qualified to represent them in whatever office chosen." Elimination of this feature "is to attack

the very foundation of the system of democracy which has made this country the greatest power on earth."

Furthermore, the Association stated that "the right of election of officials is a fundamental right of this country, embodied in the national constitution, and a fundamental principle for which the American Revolution was fought. To remove this right, under any subterfuge of so-called 'improved government' by specialists who are no longer responsible to those they are to govern, is contrary to the best interests of everyone! It is not in the interests of good government."

As noted earlier, the Sheriffs Association urged the retention of provisions "insofar as they related to the designation and election of County officials."

The Bar Association endorsed the proposal of the Woodside and Scranton Commissions, which in effect would leave it to the Legislature to determine which county officers should be elected.

Alternatives and Proposals

Other State Constitutions

In addition to the provision cited above in relation to Article XIV, Section 1, the following are noteworthy.

Sec. 5. **County officers; appointment or election; duties; compensation; jurors.** The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office.

California, Article XI

Sec. 1. **Organization and government of counties.** The General Assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government.

Sec. 3. **County charters.** The people of any county may frame and adopt or amend a charter.

Ohio, Article X

National Authorities and Organizations.

See the proposals included under Article XIV, Section 1, for the proposal of the National Municipal League. Under the *Model State Constitution*, the determination of which officers should be elected would be left to the legislature, or to the voters of a county authorized to frame and adopt a home rule charter, subject to the requirement that the county legislative body be elected.

Section 3—**Elective County Officers.** Elective county officers shall be chosen at municipal elections and shall take office on the first Monday of January next after their election. They shall hold office until their successors have qualified. Elective county officers shall be citizens of the Commonwealth and qualified electors of the county.

Woodside and Scranton Commissions
and Pennsylvania Bar Association,
Project Constitution

See also: Article XIV, Section 1, *Pennsylvania Proposals.*

Article XIV.
SECTION 3—RESIDENCE REQUIREMENTS FOR APPOINTMENT TO A COUNTY OFFICE

Present Provision

No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Historical Note

Identical provisions appear in the constitution of 1790 (Article II, Section 8) and the constitution of 1838 (Article VI, Section 8).

Interpretation of Provision

This provision was originally inserted in the Constitution of 1790 as a restriction on the appointive power of the governor, who appointed many county officers. Its interpretation involves ambiguities with respect to the term "office" and in Sections 1 and 2 with respect to the term "officer." But there appears to have been little litigation over this provision. This provision has been held to apply only to *appointed county officers and only to public* officers; it apparently does not apply to employees of the various county offices.[17]

It is significant to note that the constitution provides no residence requirements for *elected* county officers, except in the case of filling vacancies on a board of county commissioners or auditors where it is required that the county court of common pleas appoint an elector of the county (Article XIV, Section 7).

Comment

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report recommended no substantive change in the present provision. The Earle Committee report did not discuss the provision. The Woodside Commission in its 1959 report recommended that the present provision be repealed; the substance of the provision was not considered sufficiently important in current times to be included in the state constitution and was the type of matter which should be left to statute.[18]

The Scranton Commission endorsed the Sproul approach (editorial revision, but no substantive change).

National Authorities and Organizations.

Substantive provisions of this nature would not be included in state constitutions, but left to the discretion of the legislature (or the electorate of the county with respect to home rule charters) under the philosophy of authorities cited in preceding sections discussed above.

Other States.

Most state constitutions are apparently silent in this area. Some states (e.g., California) give the Legislature the power to prescribe the qualifications, including presumably residence, of any county officer.

In states which permit county home rule, the residence and other qualifications of officers would be determined by the provisions of the home rule charter. However, even in the home rule states, constitutional provisions may inhibit relaxation or elimination of residence requirements. Thus, for example, Oregon stipulates that "every county officer shall be an elector of the county."

Preparatory Committee Hearings and Other.

As noted earlier, opposition to any change in the present constitution as it relates to County government was expressed by several Pennsylvania associations of County officials, namely, (1) Prothonotaries and Clerks of Courts, (2) Register of Wills and Clerks of Orphans Courts, (3) Coroners, and (4) Controllers.

The Pennsylvania Bar Association recommended that this provision be repealed.

Alternatives and Proposals

Other State Constitutions.

See the material from state constitutions set forth in previous portions dealing with Article XIV.

National Authorities and Organizations.

Recognized national authorities and organizations would not include a provision of this nature in state constitutions. The matter is covered by the proposals listed under Article XIV, Section 1, which leave this subject to the discretion of the legislature, or to the electors in counties which are authorized to adopt locally drafted home rule charters.

Pennsylvania Proposals

Residence of County Officers. Section 13. An appointive county officer shall have been a citizen and resident of the county for one year before his appointment, if the county has been so long established, then within the limits of the county or counties out of which it has been taken.

Sproul and Scranton Commissions

The Woodside Commission and the Pennsylvania Bar Association urged the repeal of the present section.

Article XIV,
SECTION 4—COUNTY SEAT; LOCATION OF OFFICES

Present Provision

Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers.

Historical Note

The constitution of 1776 provided that an office for the registering of wills and recording of deeds be kept "in each city and county" (Article 34). An identical provision was retained in the constitution of 1790 (Article V, Section 11) and the constitution of 1838 (Article VI, Section 10). The provision was dropped from the constitution of 1874 because it was redundant, another provision having been added in the constitution of 1790 (Article VI, Section 3), which was continued verbatim in the constitution of 1838 (Article VI, Section 4), and continued in 1874, with only two minor exceptions, as the present provision.

The exceptions were: (1) adding the office of county surveyor, and (2) eliminating a previous clause permitting the governor to make an exception to the requirement for maintaining an office in the county seat for a temporary period not to exceed five years.

The surveyor was added to the list because a majority of the framers of the constitution of 1874 thought that the surveyor's records should be readily available at the county seat (although some members stated that the office of

county surveyor had become rather unimportant and didn't even merit the requirement for an office).[19]

Interpretation of Provision

The provision is interpreted to require a central storage place for county records for the enumerated offices. As defined by a judicial opinion in 1880 (Snowden's Appeal, 96 Pa. 422, 11 W. N. C. 28, 1880):

> By the use of the word "office" the Constitution does not mean that officers shall keep a room at the county seat with bare walls and empty pigeon holes . . . It refers to the place in which the business of such office is transacted and the records kept. This constitutional provision is eminently wise. Aside from the danger of the destruction or loss of the public records consequent upon their periodical removal to distant points, the public inconvenience resulting therefrom would be intolerable.[20]

Comment

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report recommended no substantive change in the present provision. The Earle Committee report did not discuss this provision. The Woodside Commission in 1959 recommended that the provision be repealed, with matters of this nature to be handled by statute and not written into the constitution. The Scranton Commission also recommended that the provision be repealed.

National Authorities and Organizations.

There is little authoritative comment specifically directed at the present provision. It falls within the general criticism against including in constitutions minor matters of administrative detail which can be left to statute.

Other States.

Numerous state constitutions (e.g., Ohio) have no provision on this subject. Some states (e.g., Oregon) stipulate that county offices shall be at such places as determined by the Legislature. Other states with a similar provision also have a prohibition against adoption by the Legislature of special or local laws "regulating county business" (Indiana).

Preparatory Committee Hearings and Other.

Opposition to *any* change in the present constitution as it relates to County government was expressed by several Pennsylvania associations of county officials, namely (1) Prothonotaries and Clerks of Courts, (2) Register of Wills and Clerks of Orphans Courts, (3) Coroners, and (4) Controllers.

The Bar Association recommended the repeal of this provision.

Other State Constitutions.

Section 8. County Officers' qualifications; location of offices of county, township, precinct and city officers; duties of such officers. All county, township, precinct and city officers shall keep their respective offices at such places therein, and perform such duties, as may be prescribed by law.

Oregon, Article VI

National Authorities and Organizations.

Recognized national authorities and organizations would not include a provision of this nature in state constitutions. The matter is covered by the proposals listed under Article XIV, Section 1, which leave this subject to the discretion of the legislature, or to the electors in counties which are authorized to adopt locally drafted home rule charters.

Pennsylvania Proposals

The Woodside and Scranton Commissions and the Pennsylvania Bar Association proposed the repeal of the present section.

Article XIV,
SECTION 5—COMPENSATION OF COUNTY OFFICERS; FEES

Present Provision

The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive, into the treasury of the county or State, as may be directed by law. In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of any such officer shall not exceed the aggregate amount of fees earned during his term and collected by or for him.

Historical Note

The constitution of 1776 first gave recognition to the compensation of county officers by providing in the section establishing county courts (Section 26) a provision that:

All their officers shall be paid an adequate but moderate compensation for their services . . . and if any officer shall take greater or other fees than the law allows him, either directly or indirectly, it shall ever after disqualify him from holding any office in this state.

This provision was eliminated in the constitution of 1790, and the constitution of 1838 was also silent on the matter of compensation of county officers.

The present provision appears for the first time in the constitution of 1874.

Interpretation of Provision

The purpose of the present provision was to prevent the accretion of large incomes to various court officers who were compensated by fees, by requiring the General Assembly to regulate their fees and by requiring the officers in large counties (Philadelphia and Allegheny at that time) to be compensated by salary, not to exceed the amount of fees earned during the term of office.

As stated in the Debates of the 1873 Convention:

> . . . In the cities of Philadelphia and Pittsburgh, there have been abuses regarding the enormous sums that these city and county officers have received, and the last clause of this section makes it obligatory upon the Legislature to pay those officers by salaries. . .[21]

The effect of the constitutional provision is to require county officers to be paid on a salary basis in counties over 150,000 population (21 of Pennsylvania's 67 counties in 1967) with the compensation in other counties left to regulation at the discretion of the General Assembly. The provision has been interpreted to apply only to the fees received for county services and not to fees received by county officers for services as agent of the state.

The matter of compensation of county officers and the handling and disposition of fees has been in frequent litigation, continuing at the present time.[22]

Comment

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report recommended that the present provision be changed to require that all county officers shall be paid by salary, covering all services "for the state government, or for the county or for any other official service." The present provision that salaries paid "shall not exceed the aggregate amount of fees earned . . . and collected by or for him" was recommended for deletion, as being obsolete.

The objective of the Commission proposal was to eliminate the frequently excessive (and generally unrecognized) compensation received by some county officers under the fee system of compensation.[23]

The Earle Committee report proposed that the fee system should be completely abolished so far as the county officers are concerned.

The Woodside Commission in its 1959 report recommended that the present provision be repealed. This was not to indicate that the subject matter was not important, but to reflect the opinion of the Commission that this was a detail to be handled by statute rather than by a constitutional provision.[24]

The Scranton Commission proposals also recommend that the present provision be repealed.

National Authorities and Organizations.

Authorities on state and local government are generally opposed to the fee system of compensation. No documentation of this point is attempted be-

cause authorities are also generally opposed to including details on such matters in state constitutions. Under the philosophy expressed by various authorities cited in previous sections (and the Woodside Commission and Pennsylvania Bar Association proposals mentioned above), such matters would be subject to regulation by statute, in optional charters, or by home rule charters in counties authorized to frame and adopt their own charters.

Other States.

Some states (e.g., Oregon) are silent on this matter. The Indiana constitution is similarly silent except to the extent that it prohibits the Legislature from enacting special or local laws regulating the compensation of county officers.

In other constitutions, there are a variety of patterns as to the role of the Legislature in setting the salaries of county officers. For example, Nevada specifies that such salaries may be regulated by the Legislature through special or local law; California gives the Legislature the power to set salaries of specified officers, and gives the county governing bodies the power over all other officers; Arizona gives the authority to the county governing bodies *unless* the Legislature has acted.

Preparatory Committee Hearings and Other.

Again it is to be noted that opposition to any change in the present constitution as it relates to County government was expressed by several Pennsylvania associations of County officials, namely, (1) Prothonotaries and Clerks of Courts, (2) Register of Wills and Clerks of Orphans Courts, (3) Coroners, and (4) Controllers.

The Bar Association proposed the repeal of this section. The Southeastern Pennsylvania Americans for Democratic Action recommended that this section be replaced by one that provides that all county and local officials be salaried.

Alternatives and Proposals

Other State Constitutions

Sec. 4. **County officers; duties, powers, and qualifications; salaries.** The duties, powers, and qualifications of such officers shall be as prescribed by law. The Board of Supervisors of each county is hereby empowered to fix salaries for all county and precinct officers within such county for whom no compensation is provided by law, and the salaries so fixed shall remain in full force and effect until changed by general law.

Arizona, Article XII

Sec. 11. **Compensation of county officers; uniform laws; statement of fees and salaries.** Except in counties which frame, adopt and amend a charter for

their own government, the compensation of all county officers shall be prescribed by law uniform in operation in each class of counties. Every such officer shall file a sworn statement in detail, of fees collected and salaries paid to his necessary deputies or assistants, as provided by law.

Missouri, Article VI

See also the material from state constitutions set forth in previous portions of this chapter relating to Article XIV.

National Authorities and Organizations.

Recognized national authorities and organizations would not include a provision of this nature in state constitutions. The matter is covered by the proposals listed under Article XIV, Section 1, which leave this subject to the discretion of the legislature, or to the electors in counties which are authorized to adopt locally drafted home rule charters.

Pennsylvania Proposals

Compensation of County Officers. Section 15. County officers shall be paid only by salary for services performed for the state government or for the county or for any other official service. Except as otherwise provided in this constitution, such salaries shall be prescribed by law. Fees received by county officers shall be paid into the treasury of the county or into the state treasury as prescribed by law.

Sproul Commission (1920)

The Woodside and Scranton Commissions and the Pennsylvania Bar Association urged the repeal of the present section.

All employees and officials of county and local government shall be salaried and all fees collected by them shall be paid over to the governmental unit by which they are employed.

Southeastern Pennsylvania Chapter
Americans for Democratic Action

Article XIV
SECTION 6—ACCOUNTABILITY OF MUNICIPAL OFFICERS

Present Provision

The General Assembly shall provide by law for the strict accountability of all county, township, and borough officers, as well for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.

Historical Note

This provision appears for the first time in the constitution of 1874. It reflected a public concern over previous scandals with respect to handling of public money.

Interpretation of Provision

This provision merely admonishes the General Assembly to do what it had already done and has continued to do. As stated by one participant in the Debates of the Convention,

"This simply states a principle. I do not understand that it is of any importance in this report. It merely says that the Legislature shall provide for strict accountability of certain officers for certain moneys. I do not know that it will have any practical or operative effect, if adopted."[25]

There has been little litigation on this provision, the only court decision recorded in Purdon's Constitution being a 1900 decision that the words municipal and municipalities as used in the constitution include townships.

Comment

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report recommended retaining a similar provision, with a slight change in wording. The intention stated was to "throw a burden on the general assembly to pass the necessary laws for that purpose."[26]

The Earle Committee report did not discuss this provision.

The Woodside Commission in its 1959 report recommended that the present provision be repealed; the subject was considered to be statutory in nature and not necessary in the constitution.[27]

The Scranton Commission proposals also recommend that the present provision be repealed.

National Authorities and Organizations.

A provision of this nature would appear to fall, under the view of most authorities, as inconsequential matter for constitutional attention.

Other States.

Many state constitutions (e.g., New York) are silent in this area.

Washington has a provision similar to Pennsylvania's but specifies that it shall not apply to home rule counties.

Preparatory Committee Hearings and Other.

The Bar Association urged the repeal of this section whereas various state associations of county officials urged its retention.

Alternatives and Proposals

Other State Constitutions.

5. *County Government.* The legislature, by general and uniform laws, shall provide for the election in the several counties of (specified county officers). . . . It shall provide for the strict accountability of such officers for all fees which may be collected by them and for all public moneys which may be paid to them or officially come into their possession.

Washington, Article XI

National Authorities and Organizations.

Recognized national authorities and organizations would not include a provision of this nature in state constitutions. The matter is covered by the proposals listed under Article XIV, Section 1, which leave this subject to the discretion of the legislature, or to the electors in counties which are authorized to adopt locally drafted home rule charters.

Pennsylvania Proposals

The Woodside and Scranton Commissions and the Pennsylvania Bar Association proposed the repeal of the present section.

Article XIV
SECTION 7—COUNTY COMMISSIONERS AND AUDITORS

Present Provision

Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year one thousand nine hundred and eleven and every fourth year thereafter; and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected; any casual vacancy in the office of county commissioner or county auditor shall be filled, by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

Historical Note

This was an entirely new provision, introducing a new concept in county government, the limited vote plan in choice of the county commissioners and auditors. This plan was proposed in the convention by Charles R. Buckalew, a leading advocate of the limited vote plan. The system then provided by statute was the election of one commissioner and one auditor each year, both officers having a three year term. Critics of the existing system, who supported Buckalew, pointed out that in most counties this resulted in one-party control. Complete dominance by one party over long periods of time led inevitably to corruption. "To talk about a minority watching outside," commented one delegate, "is simply ridiculous." Election of a minority member would force greater circumspection and greater responsibility on the part of the majority. It would provide justice for members of a party permanently in the minority, giving them a voice in government without destroying majority rule.

The opponents of the "limited vote" plan called it an "unjust," "impractical" experiment, destructive of the well-established principles of majority rule and party responsibility. Furthermore, the posts involved were purely "ministerial." "Now what politics are there in the commissioners' office?" asked one delegate. A member of the minority party was no more likely to look after the interests of the public than the majority members. More probably all three would join together in running the county. The system of electing a new man fresh from the people each year was a better guarantee. The latter plan preserved a continuity in membership denied when all three members of the commission were elected at the same election.

After a long debate involving rather bitter castigations of the "detestable experiment" by those who regarded "limited vote" and the "cumulative voting system" as threats to the republican system of government, the new plan was approved.[28]

Interpretation of Provision

The words "in each county where such officers are chosen" were inserted to allow for the substitution of an elected controller for an elected three-member board of auditors, as provided in Article XIV, Section 1, and in accordance with statutes existing in 1873.

The feature of limited voting does not provide a guarantee of minority party representation (a voter can only vote for two of the three members and a vacancy must be filled by an elector who voted for the member whose seat is vacated, but there is no restriction against members changing party registration after the election).

Comment

Prior Pennsylvania Commissions.

The Sproul Commission in its 1920 report recommended a provision similar to the present provision except (1) it was proposed to stagger the election

of county commissioners and auditors so that there would be at least one of each holding over after each municipal election, while retaining a provision for minority representation, and (2) the Governor was to make appointments to fill vacancies instead of the court of common pleas (to carry out a desire of the Commission to remove from judges all non-judicial duties).

The Earle Committee report did not mention this subject.

The Woodside Commission in its 1959 report recommended that the present provision be repealed. This was consistent with its recommendation with respect to Article XIV, Section 1, of authorizing the General Assembly to provide optional plans for the organization and government of counties. The Scranton Commission proposals were identical to the Woodside Commission proposals.

The Woodside and Scranton Commission views are based on the following lines of argument:

1. County commissioners are no longer mere ministerial officers, as they were envisaged in 1874, but are the closest thing to a county legislative body, authorized to make many decisions of a local legislative nature, and charged with over-all county administrative responsibilities.

2. As a county legislative body, the Commissioners are too few in number to provide adequate representation. Major issues of county policy are frequently resolved by a vote of only two members.

3. The minority party membership requirement for a body of only three members has encouraged political expediency, obstructionism, and political favoritism in county administration. If the two majority members are in disagreement on an issue (which has frequently occurred) the minority member becomes the controlling member. In counties dominated by one party, judicious ticket splitting enables the majority party to influence also the choice among the two minority party nominees. To share in the political favors at the disposal of the majority party representation, the minority party member is expected to be cooperative with the majority party, thereby benefiting himself, but weakening his position as spokesman for the minority party.

4. The election of all of the commissioners at one time for concurrent terms of office sometimes results in a complete turnover of the governing body, resulting in a loss of experienced leadership. Conversely, this has been also regarded by some as a favorable situation in the opportunity for the voters to register lack of confidence in a county administration and obtain a quick change.

5. The provision for electing auditors is contrary to modern practice of handling the post-audit function of local government. The substitution of an elected controller for an elected board of auditors is inadequate to provide for a satisfactory audit function in county government. Election is not the best method of securing officers to perform the pre-audit function. The post-audit function is one that should be performed by independent persons or firms not responsible to the local governing bodies nor the political parties with which they are associated.

6. The county lacks an executive officer who can provide for a coordinated administration of county functions. Moreover, the combination in a single body of legislative and executive authority runs counter to the basic pattern of separation and checks and balances present in the federal and state governments, many cities, and some of the most recently reorganized county governments in other states.

National Authorities and Organizations.

Repeal of the present provision would be consistent with the weight of most authorities on state constitutional framework, who recommend that the General Assembly be authorized to provide optional legislative charters and/or the right of counties to adopt home rule charters which would provide for their organizational structure. (See comments with respect to Article XIV, Sections 1 and 2, above.)

The relevance of national views on the *audit* functions, as currently provided in the constitutional requirements for elected auditors or controller, lies in distinguishing between pre-audit and post-audit functions, and in the fact that election is not considered the most desirable means of obtaining either type of audit services. The separation of pre-audit and post-audit functions and their performance by personnel with professional qualifications is stressed by a variety of authorities (e.g., National Committee on Governmental Accounting; International City Managers' Association, in Municipal Finance Administration, 6th ed., Chicago, 1962; Arthur W. Holmes, Auditing: Principles and Procedure, 3d ed., Chicago: Richard D. Irwin, Inc., 1951; R. M. Mikesell, Governmental Accounting, Chicago: Richard D. Irwin, Inc., 1951).

The Model County Charter of the National Municipal League provides that the county governing body shall procure an annual independent post-audit by appointment of a qualified independent accountant or firm, or by a state agency for this purpose. In New Jersey an option is provided: (a) by Registered Municipal Accountants, or (b) by the Department of Community Affairs.

The inadequate size of the county commissioners as a representative county legislative body is indicated by the recommendations of the National Municipal League Model County Charter that a county governing body ought to consist of at least five members in all counties, but not more than nine in any except the largest counties.[29]

The lack of a county executive or chief administrative officer is cited by most authorities as a basic weakness of the kind of county government that exists in Pennsylvania. Some authorities' proposals (such as that of the National Municipal League Model County Charter) suggest that a county manager or county administrator appointed by and responsible to the county commissioners be provided.

Another proposal is the provision for an elected county executive such as

exists in some counties in New York, in New Castle County (Delaware), and other states. This is one of the suggestions of the Advisory Commission on Intergovernmental Relations.[30]

The various types of options suggested by authorities are contingent on the proposals with respect to Article XIV, Sections 1 and 2 of the constitution, to delete the constitutional specification of officers and permit the General Assembly to provide alternatives.

Other States

As to Enumeration of County Officers: The practice of other state constitutions with respect to enumerating county officers is discussed above in connection with Article XIV, Section 1. It is interesting to note, however, that the Alaska constitution, which declares that the purpose of its local government article is "to provide for maximum self-government," stipulates that the "assembly" shall be the "governing body" of certain counties ("organized boroughs"). The "composition" of the assembly "shall be established by law or charter."

As to Specified Term of Office: This is discussed above in connection with Article XIV, Section 2.

As to Specified Limited Voting: Apparently no other state constitution specifies that certain county officers shall be elected through the device of limited voting (i.e., whereby each voter may not vote for more than, say, two out of the three to be elected).

As to Filling of Vacancies by a Court: Many states are silent on the matter of filling vacancies among county officers.

Some states (e.g., Colorado) give the Governor the power to fill vacancies in the office of County Commissioner; and the Board of County Commissioners is authorized to fill vacancies among all other county officers.

Indiana authorizes the Legislature to prescribe the method of filling vacancies. Mississippi permits the Legislature to authorize the Governor to fill vacancies.

Apparently, no state other than Pennsylvania singles out the County Auditors for specification as to how vacancies among them shall be filled.

Preparatory Committee Hearings and Other.

The Bar Association recommended the repeal, and several associations of county officials recommended the retention, of this provision.

The Southeastern Pennsylvania Americans for Democratic Action proposed that counties should be required to have a single elected chief executive and a legislative council of elected representatives from municipalities and from at large, with minority representation guaranteed.

John W. Cook has criticized the lack of provision for a single executive in Pennsylvania county government. He states:

The lines of authority, responsibility and executive direction in county government are fragmented and unclear. . . . The primary reason for this is simply that the responsibility and authority for managing county affairs are not concentrated in one individual. There is no effective coordinator of all county functions.[31]

As to the provision for elected county auditors, this criticism has been made:

It is generally agreed that the independent auditor, in contrast to the elected auditor who oftentimes is politically dependent, is preferably appointed or selected by the legislative body of the governmental unit. . . . Since the elected auditors are not continually on the county administrative scene, they cannot possibly perform a pre-audit, and since they are utilized, the county cannot have a controller to perform the pre-audit. This disadvantage is mitigated by the fact that the chief clerk can perform the pre-audit function in place of a controller.[32]

Alternatives and Proposals

Other State Constitutions

Sec. 9. **Vacancies; how filled.** In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment; and *in case of a vacancy in any other county office, or in any precinct office,* the board of county commissioners shall fill the same by appointment; and the person appointed shall hold the office until the next general election, or until the vacancy be filled by election according to law.

Colorado, Article XIV

Sec. 9. **Vacancies.** Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.

Indiana, Article VI

Sec. 6. **Vacancies in county, etc., offices, how filled.** The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified.

Washington, Article XI

National Authorities and Organizations.

Recognized national authorities and organizations would not include a provision of this nature in state constitutions. The matter is covered by the proposals listed under Article XIV, Section 1, which leave this subject to the discretion of the legislature, or to the electors in counties which are authorized to adopt locally drafted home rule charters.

Pennsylvania Proposals

The Woodside and Scranton Commissions and the Pennsylvania Bar Association proposed the repeal of the present section.

See also Article XIV, Section 1, *Pennsylvania Proposals*.

Article XIV
SECTION 8—ABOLITION OF COUNTY OFFICES IN PHILADELPHIA

Present Provision

(1) In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.
(2) Local and special laws, regulating the affairs of the city of Philadelphia and creating offices or prescribing the powers and duties of officers of the city of Philadelphia, shall be valid notwithstanding the provisions of section seven of article three of this constitution.
(3) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia.
(4) The city of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the county of Philadelphia.
(5) The provisions of article fifteen, section one of the Constitution shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.
(6) This amendment shall become effective immediately upon its adoption.
(7) Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia, and, until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Historical Note

The present provision was adopted in 1951. It partially accomplished an objective sought by government reform groups after all of the municipalities in Philadelphia county were consolidated into a single city in 1854. The 1854 consolidation did not affect the county government organization, and the territory of the city-county continued to be governed by two sets of local

officials. As stated in a recent study of the historical development of local governments:

> During the 20th century, the divided, though coterminous, city and county governments became of increasing civic concern. Many functions overlapped; many county officers appeared unnecessary, as their major functions were adequately performed by city officers; considerable duplication of facilities, personnel, and expense were apparent . . . The organization of county government, was 'locked in' in the Constitution of 1874, which designated the county officers and also prohibited the General Assembly from passing special or local acts. In order to achieve consolidation of the city and county governments after 1874, it was necessary to amend the Constitution . . . The culmination of a number of civic scandals and evidence of widespread corruption in Philadelphia government in the late 1940s aroused state-wide concern resulting in the adoption of a city-county consolidation amendment in 1951 . . .[33]

Associated with the city-county consolidation amendment was the adoption in 1951 by the voters of Philadelphia of a home rule charter, authorized by the First Class City Home Rule Act of 1949 (see discussion below of Article XV, Section 1).

The consolidation of county officers in Philadelphia into the city government brought such officers within the purview of the city's home rule charter, creating issues which have not as yet been entirely resolved.

Interpretation of Provision

A major question in connection with city-county consolidation was the extent to which the amendment of 1951 (above) was self-executing. The specific point involved is in paragraph (7) which reads:

> Upon adoption of this amendment all county officers shall become officers of the city of Philadelphia, *and until the General Assembly shall otherwise provide*, shall continue to perform their duties and be elected, appointed, compensated, and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective . . . (Emphasis supplied)

The State Supreme Court has held that the amendment once adopted brought the officers and employees of the former county offices not only into the city government but also under the city's housekeeping controls (e.g., merit system) of the Home Rule Charter. The Supreme Court also ruled, however, that the actual reorganization of the former county offices and agencies would have to be done by the state legislature itself or by city council if the state legislature delegated the power to it.

The state legislature has delegated to the city council such power for some offices and agencies (e.g., Recorder of Deeds). In 1963, the General Assembly authorized the city council to deal with the other offices (e.g., Registration Commission) subject to approval of the voters of any changes to be made, in the same manner as amendments are made to the city charter. (The latter qualification is consistent with recommendations made by the Woodside

Commission, Pennsylvania Bar Association, and Pennsylvania Economy League, discussed below.)[34]

To date, the city has acted with respect to most of the offices, the principal exceptions being the Sheriff and Board of Revision of Taxes. However, the authority to deal with these offices in the future has been delegated to city council and the people of Philadelphia.

Specifically excluded by the Supreme Court, in its definition of county officers who became city officers, was the prothonotary and the register of wills. The reason for the exclusion of these two officers was that their existence was prescribed by other parts of the constitution (Article V, Sections 7 and 22). As a result of this interpretation, these two offices are excluded from the civil service provisions of the city charter and stand out as islands for political patronage in a city government otherwise subject to civil service regulations.

A further complication exists with respect to the District Attorney, who had earlier been defined as a city officer subject to the Home Rule Charter, but was recently (in 1967) ruled to be eligible to stay in office while running for another city office instead of resigning as the Home Rule Charter would require. The decision in this instance was based on the District Attorney being a state officer not bound by the provision of the City Charter in question.

Comment

Prior Pennsylvania Commissions.

The Sproul Commission, in its 1920 report, recommended that city-county consolidation be implemented in Philadelphia, in a proposed Article XIII, Section 9, providing that, "In a county coextensive with a city or included therein, any constitutional county office may be transferred to a city officer or officers."[35]

The Commission also proposed (in Section 16) that the county and city treasury be combined into a single city treasury, and that the city control the expenditures of state and county offices which were paid in whole or part by the city, except for salaries prescribed by law and the expenses of the courts of common pleas and orphans court. The objectives of the Sproul Commission recommendations were implemented in part by the amendment adopted in 1951.

The Earle Committee report proposed complete consolidation of city and county governments in cities co-extensive with counties.

The Woodside Commission in its 1959 report recommended retaining the substance of the present provision with a few amendments to clear up the confusion cited above ("Interpretation").

The Scranton Commission proposals are virtually identical with the proposals of the Woodside Commission.

The Present Pennsylvania provision with respect to Philadelphia constitutes a specific grant of constitutional authority, providing an exception to constitutional requirements applying to all other counties. Recognized national authorities and organizations recommend constitutional provisions giving the general assembly the authority to provide options (including the right to enact locally drafted home rule charters) for county government and the consolidation of counties and municipalities. Under such broad grants for legislative action and local initiative, a special provision such as is now provided in the Pennsylvania constitution for Philadelphia would not be necessary.

The concept of city-county consolidation (to eliminate overlapping governments covering the same area) is endorsed by national authorities and organizations. For example, the National Municipal League states in the explanatory comments in its latest Model Constitution that "There is increasing concern over the multiplicity and complexity of local government . . . if a system of local government is to operate effectively, the maze of civil divisions found in most states must be rationalized . . . freedom from excessive constitutional strictures would permit the legislature and the localities, working together, to reorganize counties, consolidate local governments and create federated communities if such action can best serve urban age needs."[36]

The Model Constitution proposal for county government states that a county charter may provide "for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions . . . it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for division of the county into districts for purposes of administration or of taxation or of both." Such powers would be exercised only upon a majority vote of the voters in the county, in any city containing more than 25% of the total population of the county, and in the county outside of such city or cities.[37]

These powers would be in addition to a general grant of authority to the legislature "to provide by general law for the government of counties, cities and other civil divisions and for methods and procedures for incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries" (Section 8.01—see discussion above with respect to Pennsylvania Article XIV, Section 1).

The Committee for Economic Development (CED) points to city-county consolidation as a desirable step wherever feasible, especially in metropolitan areas contained within the boundaries of a single county. The CED recom-

mends that city and county functions should be consolidated wherever possible.[38]

Other States

Many state constitutions are silent as to consolidating the government of a city and a county.

Georgia authorizes the Legislature to provide by general law for optional systems of consolidated county and municipal government, subject to referendum.

Washington's constitution mandates that the Legislature "shall" by general law provide for the "formation of combined city and county municipal corporations," subject to referendum.

Florida permits the Legislature to "abolish municipalities" and "provide for their government." In addition, the Florida constitution authorizes the Legislature to provide, subject to referendum, for city-county consolidation in specified counties. Also, the constitution specifically and directly authorizes the people of Dade County to consolidate their county and municipal governments through adoption of a home rule charter.

Preparatory Committee Hearings and Other

The Bar Association proposed a provision which is virtually identical with the Woodside Commission.

A similar approach is taken by the Pennsylvania Economy League (Eastern Division) which stated in a 1960 report that "in order to accomplish the objective of complete city-county consolidation [in Philadelphia] and to complete the transfer of power from the state legislature to the city, we recommend that the reservation of power to the State Legislature contained in paragraph (7) of Section 8 be deleted and vested in the City of Philadelphia through amendments to the Home Rule Charter." The League noted that this would be consistent with the most authoritative opinion calling for optional legislative charters, including an option for locally drafted home rule charters.[39]

The Southeastern Pennsylvania Americans for Democratic Action suggested that the voters of all counties be permitted to ballot for municipal-county consolidation.

The Home Builders Association advocated provisions that would establish fewer, larger local governments, with more powers concentrated at the county level.

A Modern Constitution for Pennsylvania, Inc., would require the Legislature to establish and maintain minimum standards for local governments, based on population, area, fiscal capacity, growth rate or other determinants, and to encourage the voluntary consolidation of the less effective local units

of government. It also proposed state aid to local governments whose consolidation has the approval of their voters, but where "the equitable disposition of their assets and debts poses special problems."

Alternatives and Proposals

Other State Constitutions

Sec. 7. **Consolidation of city and county governments.** City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or prohibited to cities, shall be applicable to such consolidated government.

California, Article XI

Sec. 11. **Dade county, home rule charter.** (1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body.

Florida, Article VIII

Paragraph VII. **Consolidation of governments; submission to voters.** The General Assembly may provide by general law optional systems of consolidated county and municipal government, providing for the organization and the powers and duties of its officers. Such optional systems shall become effective when submitted to the qualified voters of such county and approved by a majority of those voting.

Georgia, Article XI, Section I

Sec. 16. **Combined city and county.** The legislature shall, by general law, provide for the formation of combined city and county municipal corporations, and for the manner of determining the territorial limits thereof, each of which shall be known as a "city and county," and when organized, shall contain a population of at least three hundred thousand (300,000) inhabitants. No such city and county shall be formed except by a majority vote of the qualified electors of the area proposed to be included therein and also by a majority vote of the qualified electors of the remainder of that county from which such area is to be taken. Any such city and county shall be permitted to frame a charter for its own government, and amend the same, in the manner provided for cities by section 10 of this article: *Provided, however,* That the first charter of such city and county shall be framed and adopted in a manner to be specified in the general law authorizing the formation of such corporations: *Provided further,* That each such charter shall designate the

respective officers of such city and county who shall perform the duties imposed by law upon county officers. Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter, not inconsistent with general laws, and in addition thereto, such rights, powers and privileges as may be granted to it, or possessed and enjoyed by cities and counties of like population separately organized.

Washington, Article XI

National Authorities and Organizations

See Article XIV, Section 1, *National Authorities and Organizations*, for pertinent sections of the National Municipal League, *Model State Constitution*.

Pennsylvania Proposals

The Sproul Commission proposals were made prior to adoption of the present provision.

Section 4—**County Government Abolished in Philadelphia**

(a) In Philadelphia, all county offices are abolished. The city shall perform all functions of county government within its area.

(b) Local and special laws with respect to powers granted to the City of Philadelphia shall be valid notwithstanding the provisions of this Constitution relating to local and special legislation.

(c) All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.

(d) The City of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the County of Philadelphia.

(e) All officers performing functions of county government shall be officers of the City of Philadelphia. Until otherwise provided by the City of Philadelphia through amendment to the Philadelphia Home Rule Charter, they shall continue to perform their duties and be elected, appointed, compensated and organized in the manner now in effect.

Pennsylvania Bar Association and
Scranton Commission (1964); virtually
identical with Woodside Commission

All functions of county and local government, including the operation of the schools, shall be the responsibility of the county or local governments as the Legislature may determine, provided however, that should the majority of the voters of any county and of all of the local governmental units therein so determine, any or all local governmental functions may be assigned to the county government and if the voters so determine, local governmental units may be abolished.

Southeastern Pennsylvania Chapter
Americans for Democratic Action

Article XV—Cities and City Charters

SECTION 1. HOME RULE

Present Provision

Cities may be chartered whenever a majority of electors of any town or borough having a population of at least ten thousand shall vote at any general or municipal election in favor of the same. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof, and approved by a majority of those voting thereon.

Historical Note

In its original form Section 1, Article XV of the 1874 Constitution was captioned "When Cities May Be Chartered" and simply authorized the chartering of cities "whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same." This is what is contained in the first sentence of the present provision, except that, by the amendment of 1922, such vote may be held at either a general *or municipal* election. The original section on chartering of cities was a companion provision to the one (originally Section 7, Article III) prohibiting local or special laws granting or changing charters.

The second and third sentences of the present provision were added by the 1922 amendment. This amendment supplied the new section caption "Home Rule" and, in permissive language, authorized the Legislature (1) to grant to cities *only* the power to frame and adopt home rule charters within any limits imposed by the Legislature and (2) to enact laws relating to the organization and government of both cities *and boroughs* to become effective in any city or borough only when approved by a majority of those voting thereon.

Interpretation of Provision

Historically, municipalities have been viewed as creatures of the state existing at the state's sufferance and having only those powers granted by the state. Under the traditional doctrine of Dillon's Rule,[40] municipalities may exercise only those powers "granted in express words" and "those necessarily or fairly implied in or incident to the powers expressly granted. . ." As pointed out in Chapter Two, Dillon's Rule is expressed in Pennsylvania law in *Philadelphia v. Fox et al.*[41]

Within the limitations and requirements of Constitutional provisions, the General Assembly has full power to legislate on the organization, powers, and

functions of local government. Of the various Constitutional provisions relating to local government (other than those in Articles IX, XIII, XIV, and XV) Sections 20 and 32 of Article III are particularly relevant here. Section 20 gives power to the Legislature to classify counties, cities, boroughs, school districts, and townships according to population, and stipulates that all laws passed relating to any class shall be deemed general legislation. Section 32 prohibits the General Assembly from passing any local or special law "regulating the affairs of counties, cities, townships, wards, boroughs or school districts" or "erecting new townships or boroughs, changing township lines, borough limits or school districts."

Accordingly, for legislative purposes, all local governments have been classified. There are, in addition to eight classes of counties (see Chapter II, section dealing with counties), four classes of cities (first class - Philadelphia, second class - Pittsburgh, second class-A - Scranton, and third class - 48 cities); only one class of boroughs (approximately 950); two classes of townships (first class - 89, second class - 1,466); as well as five classes of school districts. Despite the Constitutional prohibition of local or special laws, legislation may be enacted for these various classes even though there is only one unit in a particular class, as is the case with the cities of Philadelphia, Pittsburgh, Scranton, and Allegheny County. Basic legislation affecting local government is contained in codes relating to the various types and classes of local governments, and regulating their organization, powers, and functions.

In addition to code legislation, there is extensive non-code, general legislation applicable to local government with respect to such matters as intergovernmental cooperation, municipal borrowing, local tax powers, tax collection, municipal employees retirement, and others.

Although the 1922 Constitutional amendment authorized legislation granting home rule powers to cities, the General Assembly did not exercise its authority until 1949 when the First Class City Home Rule Act was enacted.[42] Under this enabling legislation, Philadelphia framed, and in 1951 adopted its present Home Rule Charter which went into effect on January 7, 1952. Philadelphia is still the only municipality in Pennsylvania operating under home rule broadly defined. In 1963, the General Assembly extended the home rule grant to Philadelphia to embrace the public schools, and, in 1965, the electors approved a Supplement to the Philadelphia Home Rule Charter establishing a home rule school district.[43]

In 1957, the General Assembly granted to cities of the third class the right to choose, by vote of their respective electorates, either the mayor-council form of government or the council-manager form, as an alternative to the commission form which was up until that time legislatively mandated for all cities of the third class.[44] This grant of power to cities of the third class, unlike that to Philadelphia, does not confer the right to frame and adopt their own charters or give broad powers of local self-government. Rather, it is limited to matters of structural form.

Similarly, boroughs and townships have been authorized by the General Assembly to establish by ordinance the council-manager plan of government. There are 150 boroughs and townships which have exercised this option and are operating under the council-manager plan.

Comment

Section 1—Article XV deals with important local government concepts which have excited extensive study and discussion in Pennsylvania and other states as well as by national organizations and students of local government.

Prior Pennsylvania Commissions

The Sproul Commission in its 1920 report[45] (prior to the Home Rule Amendment of 1922) recommended a brief permissive home rule provision for cities: "Laws may be enacted giving to cities or to cities of a particular class, authority to frame, adopt and amend charters for their organization and government." In its annotations, the Commission explained that it did not recommend a self-executing constitutional provision giving home rule charter power outright to cities "because it is impossible to frame such a provision so as to avoid doubt of its meaning. The organization and government of a city must, of course, conform to the laws of the commonwealth and any attempt to define in the constitution exactly where the powers of the commonwealth shall end and those of the city shall begin will give rise to endless litigation. The determination of the cities' powers of home rule must be a carefully drawn statute, in which there will be a place for details not suitable for a constitution."

The Earle Commission in its 1935 report (in reviewing Section 1 in its present form) recommended simply that "The Legislature should have wider powers in classifying municipalities and reorganizing local government."

The Woodside Commission in 1959[46] proposed a complete revision of Article XV (see "Alternatives and Proposals," this section). Its proposed Section 1 would vest in the General Assembly full power to provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries would be changed and municipalities consolidated or dissolved. This proposed revision would eliminate the present requirement of a minimum population of 10,000 for incorporation as a city, and would leave to the General Assembly the power to determine the population line between cities and boroughs.

The Commission's proposed Section 2 would retain the present authorization of the Legislature to provide optional plans of municipal organization and government to be adopted or abandoned by majority vote of the electors voting thereon.

The Commission's proposed Section 3 would substitute for the present

permissive home rule provision of Section 1 a detailed, self-executing home rule authorization for both cities and boroughs. The Commission's own commentary on this section is a succinct explanation of this particular approach to home rule:

> The home rule provision of the present Section 1, which is applicable only to cities, would be replaced by a new Section 3, which would provide home rule authority for both cities and boroughs and would embrace a different approach to home rule. The first important difference to note is that the new provision would be self-executing in the sense that charter-making powers and the substantive home rule powers would be made available directly by the Constitution and would not have to be made available by enabling legislation, whereas under the present Constitution enabling legislation is necessary. It is true that the proposed plan would leave the legislature free to spell out the details of charter-making procedure, but the municipality might by action of its legislative body, cover the ground in default of action by the General Assembly. The significance of this self-executing feature is made clear by reference to the fact that twenty-seven years elapsed before enabling legislation was passed to effectuate the present provision and that only as to cities of the first class.
>
> The present home rule provision makes the well-known distinction, which is fairly common in other home rule states, between so-called matter of state concern and what falls under the head of local self-government. Local autonomy is confined to the latter. Experience in other states has demonstrated that this is not a distinction of solid meaning and predictable application. As a matter of fact, its presence in the constitutional home rule provision has often served simply to shift questions, which are largely political in character to the judicial forum for decision. The central idea in the proposed provision rejects the assumption that governmental powers and functions are inherently of either general or local concern. It proceeds, instead, on the theory that a municipality, which adopts a home rule charter, should be free to exercise any appropriate power or function except as expressly limited by its home rule charter or by general statute. This has the double advantage of reversing the traditional strict-constructionist judicial approach to municipal powers and, at the same time, giving the legislature ultimate authority to deal flexibly, on a broad basis, with the problems of a fast-changing society. It will be seen that this approach avoids the rigidity of an outright grant of substantive powers which are beyond legislative control, and, at the same time, embraces a policy of great freedom of local decision, subject to possible legislative action in the interest of the larger community.
>
> In one respect the proposed home rule plan would give charter municipalities authority which would be beyond legislative control. It would confer this kind of autonomy with respect to municipal executive, legislative and administrative structure and organization, and to the selection, compensation, terms and conditions of service, removal and retirement of municipal personnel. These are considered to be matters which should be fully within the local purview.

The Scranton Commission in 1964 also proposed a revision of the present Section 1, but, whereas the Woodside Commission proposed self-executing home rule provisions, the Scranton Commission recommended retention of the permissive approach whereby the General Assembly would be given general authority to provide by general law (1) for the incorporation and govern-

ment of cities and boroughs and the methods by which, with the consent of the electors, municipal boundaries might be altered and municipalities consolidated or dissolved; (2) for optional plans of municipal organization and government to be adopted or repealed by majority vote of the electors of a city or borough; and (3) for grants to cities and boroughs of the right to adopt, amend or repeal their own home rule charters within the limits imposed by the General Assembly. (See "Alternatives and Proposals," this section.)

National Authorities and Organizations.

Two of the most authoritative and complete resources on constitutional provisions in the general area of local government are the National Municipal League's latest edition of its Model State Constitution, Sixth edition, 1963, and the American Municipal Association's Model Constitutional Provisions.[47] Because of their importance, the relevant local government provisions of each are reproduced verbatim in the "Alternatives and Proposals" part of this section. The monographs themselves should be referred to for their complete commentary on the basic concepts and principal features of the various provisions and alternate provisions. However, the following excerpts from relevant commentary in the National Municipal League's Model State Constitution may highlight points to be kept in mind in studying the League's model provisions on local government:

A rapidly changing age requires flexibility. The postwar era has complicated long standing concepts of state-local and interlocal legal relationships. Heavily detailed, overly specific, unduly restrictive constitutional treatment of state-local relations will merely prevent the very flexibility needed to meet the unprecedented demands of urban life.

1. The *Model* mandates the existence of only counties and cities, and flexibility is preserved by not specifying other forms of local government such as towns, villages, special districts, etc., although the legislature is left free to create them (including entirely new types) as it sees fit.
2. If a system of local government is to operate effectively, the maze of civil divisions found in most states must be rationalized. Freedom from excessive constitutional structures would permit the legislature and the localities, working together, to reorganize counties, consolidate local governments and create federated communities if such action can best serve urban age needs.
3. A question sometimes arises as to whether a local government article can provide, as in section 8.01 (2), for legislatively "packaged" optional charters or forms of local government simultaneous with a provision for home rule by which civil divisions may develop a structure of government of their own choosing, as in section 8.01 (3). A state constitution would do well to provide both.
4. Section 8.01 (3) requires the legislature to pass a home rule law for the adoption or amendment of home rule charters of their own design by cities and counties. The provision is mandatory though not self-executing. It appears that the home rule concept is sufficiently well established in most states to permit reliance on the legislature's compliance with the constitutional mandate. The advantage of such a mandatory, though nonself-executing, provision for home

rule charters lies not only in freeing the constitution of a mass of procedural detail but also in leaving the details of charter-drafting to legislation, which may reflect changing needs more adequately, rather than to rigid constitutional requirements.

5. In states where experience indicates the legislature will not abide by the constitutional mandate and is likely to thwart local home rule aspirations by failing to pass the necessary charter legislation, flexibility may have to be sacrificed and the alternative provision for self-executing home rule powers (alternate sec. 8.02) may have to be used.
6. Section 8.02 dealing with the substantive powers that the home rule counties and cities may wield, covers the heart of the problem of balancing the legal relationships between the state and local governments. Two distinct basic approaches to this problem have been actively debated. The newer one has been advanced by the American Municipal Association. The other, the more traditional one, was incorporated in prior *Model State Constitutions*. This edition of the *Model* adopts the new approach but also includes, as an alternate, the more detailed language of the old.
7. Section 8.02 enables a county or city to exercise *any* legislative power or perform *any* function of government which is not specifically denied in its charter, or denied to all counties or cities or classes thereof, by general law. In this way Dillon's rule (the narrow construction of the powers of local government) is reversed, for the presumption in the judicial interpretation of the AMA approach would have to be that the county or city has the power to act unless the power has been specifically denied.
8. Alternate sections 8.02, 8.03, 8.04 and 8.05 provide for the traditional home rule approach, continuing, in identical form, a number of the sections from the 1948 *Model State Constitution*. Alternate section 8.02 is a self-executing provision; alternate section 8.03 deals with the powers of local units; alternate section 8.04 lays down a series of prescriptions that must be followed by a county in developing a home rule charter; and alternate section 8.05 deals with the substantive home rule powers granted to cities.

The distinctive feature of the American Municipal Association's Model Provisions is a constitutional grant of substantive powers which does not require enabling legislation but is not beyond legislative control. "This reverses the traditional non-home rule pattern; the power is there unless clearly denied by positive enactment. The familiar home rule distinction between general and local affairs, a distinction which has defied reasonably predictable application because of its lack of a firm rational core, is laid aside. A charter city, under the draft, would have power 'to exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute.' This leaves room for constitutional questions as to what powers a legislature may devolve upon any municipality but makes nothing of the general concerns-local affairs dichotomy. It is designed to give practical expression to genuine home rule policy without exalting local independence in fixed geographical areas to the extent of materially hamper-

ing the making of provision for effective organization and authority to perform needed governmental functions in the state."[48]

The Advisory Commission on Intergovernmental Relations deals in several of its authoritative publications with state constitutional treatment of local government. Particularly worthy of note is its support of the "residual powers" concept originally formulated by Jefferson Fordham for the American Municipal Association and adopted by the National Municipal League in its latest edition of the Model State Constitution. Its version of such a provision is as follows:

> Municipalities and counties (or selected units identified to best suit the conditions in a given state) shall have all residual functional powers of government not denied by this constitution or by (general) law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express denials may be limitations of methods or procedure. Pre-empted powers may be exercised directly by the state or delegated by (general) law to such subdivisions of the state or other units of local government as the legislature may by (general) law determine.[49]

Among its comments on this suggested provision the Commission states that:

> Experience has shown that where local governments are not adequately empowered to meet their responsibilities, pressure is exerted upon both the state and federal governments to assume responsibility for solving local problems and for providing needed governmental services. Under such circumstances, the flow of responsibility to the state or the federal government often is detrimental not only to the best interests of our society, but is unnecessary. The effectiveness of local government in particular, and the federal system in general, requires that local governments have adequate authority to meet their responsibilities.

In connection with the matter of achieving an adequate balance in legal relationships between the state and local governments, the Advisory Commission on Intergovernmental Relations presents in its *1967 State Legislative Program* the following statement relative to the assertion of state legislative authority with respect to metropolitan area problems:

> Because of the rapid changes taking place in metropolitan areas, it is necessary that the state be in a position to afford leadership, stimulation and, where necessary, supervision with respect to metropolitan area problems. This is especially the case where the metropolitan area embraces more than one county, so that no governmental authority short of the state can be brought to bear upon the whole area involved. Constitutional provisions that, in conferring home rule on municipalities or counties, spell out functions of government concerning which the state legislatures may not intervene, have the effect of placing handcuffs upon the state in helping the local area meet functional problems that grow beyond effective local administration. For example, if water supply and sewage disposal are among municipal-type functions enumerated in a constitutional home rule provision for municipalities, the state becomes powerless in the attempt to exert any authority with respect to an areawide approach to water supply or

sewage disposal. In other words, some problems today have grown beyond city limits but the city's power to cope with a situation ends abruptly at its boundary lines. The complexity of the problems, and the inability of many smaller units to cope with them, defeat the essential theory of local home rule with popular control. One may ask, where everybody is concerned but no one unit has the power to act, of what avail is local popular control?

States are urged, when considering general constitutional revision or undertaking constitutional changes with regard to local home rule, to reserve sufficient state authority to enable legislative action where necessary to modify responsibilities of and relationships among local units of government located within metropolitan areas, in the best interests of the people of the area as a whole.[50]

The Committee for Economic Development in its policy statement, *Modernizing Local Government*, stresses the need for drastic revision of patterns of local government to encourage local policy decision-making and to permit effective management of local affairs:

> . . . major structural adjustments are required if we are to preserve the fundamental values in local self government. . . These values extend far beyond the efficiencies to be gained through consolidations and reorganizations. Citizen participation in community affairs is the central pillar sustaining a democratic society; it is an invaluable training school for service at other levels. Revitalized local governments will command greater public interest and popular support. Initiatives channeled through effective local units will foster creative experimentation in meeting the diversity of needs from region to region, from urban to rural areas, and from place to place within the same state.[51]

In line with its central objective of strengthening local government, CED, among other things, urges the states to revise their constitutions to modernize the forms and powers of local government, and, once local governments have been redesigned, to grant them broad home rule powers. CED calls for affirmative state action in coordinating local government consolidation and unification, and suggests this task be initiated by establishing a boundary commission "with continuing authority to design and redesign local jurisdictional lines, and to set time tables for consolidations and annexations."

Other States.

Other state constitutions reflect a wide spectrum in their treatment of the subject of local government, ranging from silence to general legislative authorizations to a variety of more detailed and restrictive provisions, with respect to different types of municipalities and civil subdivisions. The "Alternatives and Proposals" section contains a selection of illustrative provisions from other states. Commentary here focuses on those reflecting different approaches to home rule.

Ohio's provision describes constitutional home rule in a comprehensive and self-executing form. It authorizes all municipalities, whether or not they have adopted a charter, "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."

The Massachusetts provision is also self-executing. It is interesting primarily because of the way it divides powers between the State and home rule cities. It provides that any city or town may, by local legislative action, exercise any power which the state legislature has power to confer and which is not denied to it by constitution, general law, or its own charter.

Although the Alaska provision is self-executing in that it grants to all first class boroughs (counties) and cities the right to "adopt, amend or repeal a home rule charter," it leaves the procedure to general law. However, "in the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter."

Other states have assigned the implementation of home rule provisions to the state legislature. Such non self-executing provisions are usually classified as mandatory or permissive with respect to the legislature. The Pennsylvania provision is permissive. The Michigan provision, on the other hand, is mandatory. It provides that "under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village." Under such general laws, first enacted in 1909, more than 200 Michigan cities and villages have adopted home rule charters.

An alternative to home rule (sometimes provided along with home rule) is the optional charter (or forms) system. New Jersey is one of the leading exponents of the optional forms approach; its legislature, in 1950, enacted legislation which permits municipalities a choice of three basic forms—mayor-council, council-manager, and weak mayor—and many variations with respect to size of councils and methods of nominating and electing councilmen.

Preparatory Committee Hearings and Other

The Pennsylvania Bar Association's proposed revised article on Cities and City Charters would mandate the General Assembly to provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved. It would permit the General Assembly to provide optional plans of municipal organization and to grant home rule powers to cities and boroughs. The Bar Association proposal differs from the Scranton (1964) Commission proposal in that it does not include a requirement that all methods for changing municipal boundaries or consolidating or dissolving municipalities be approved by the electors of the political subdivisions involved.

The Bureau of Municipal Research-Pennsylvania Economy League (Eastern Division) in *Philadelphia and Constitutional Revisions* (September 1960) proposed a number of amendments to Section 1, Article XV. The key recommendation would provide cities of over one million population (Philadelphia) with a self-executing grant of home rule power; for other cities of any particular class the General Assembly would be authorized to grant the right and power to frame and adopt their own charters. Any such home rule charter could provide for a form or system of municipal government and for the exercise of any and all powers relating to municipal functions not inconsistent with the U. S. Constitution, the Pennsylvania Constitution, or general laws of the Commonwealth. Furthermore, the proposal would provide that charter provisions with respect to municipal executive, legislative, and administrative structure, organization, personnel, and procedures would be of superior authority to statute, subject to the requirement that the members of the municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings.

The Pennsylvania League of Cities recommended amendments to the Constitution covering (1) grant of residual functional powers to municipalities along the lines proposed by the Advisory Commission on Intergovernmental Relations and the National Municipal League; (2) establishment of a "municipal boundary commission" along the lines of Alaska's constitutional provision; (3) optional plans of city government organization as proposed by the Woodside Commission, with two changes: mandating the state legislature to provide optional plans and limiting the provision to cities; and (4) self-executing home rule charter-making powers as proposed by the Woodside Commission, but again limited to cities only. In the judgment of the League, inclusion of a provision covering optional forms of government would give cities needed flexibility and freedom to deal with local affairs, and would provide "a mid-way step for a city that does not choose to adopt a home rule charter."

A Modern Constitution for Pennsylvania, Inc. endorses the proposals of the Pennsylvania Bar Association for amending Article XV (as well as XIII and XIV) of the Constitution, and recommends, in addition, the following steps:

1. Require the General Assembly to provide optional forms of government for counties, cities, and boroughs,
2. Provide state cooperation to local governments which desire to combine facilities or services,
3. Require the General Assembly to establish minimum standards for local governments (based on population, area, fiscal capacity, growth rates or other determinants), and to encourage voluntary consolidation of the less effective units of government, and
4. Provide state aid to local governments whose consolidation has the approval of the voters but where the equitable disposition of assets and debts poses special problems.

The Local Government Conference supports the principle of residual powers for local government and proposes an amendment similar to the language used by the Advisory Commission on Intergovernmental Relations, which provides that all residual functional powers of government not denied by this constitution or by law be granted to cities, boroughs, towns, and townships. It also recommends that the power to regulate wages, hours, and working conditions of municipal government employees be granted to local governments, on the grounds that the enactment of legislation by the General Assembly on this subject is detrimental to the orderly conduct of local government. The Conference favors "limited home rule" for urban municipalities and supports the Woodside Commission's proposal on optional plans of municipal organization, but proposes that the legislature be mandated to provide the optional plans.

The Pennsylvania State Association of Township Commissioners, at the public hearings held July 27, 1967, unanimously endorsed the policy statement of the Local Government Conference.

The League of Women Voters of Pennsylvania supports more self-determination for local government, a wider choice of forms of government available to counties and to municipal subdivisions, and the right of all local governments to frame their own charters, subject to voter approval. The League also believes that every optional plan should mandate an elective governing body. It supports, in general, the Pennsylvania Bar Association's proposals for Articles 13, 14, and 15, and sections of the present Article 9, but would like to see the proposals broadened to include first and second class townships. It recommends that consideration be given to rephrasing Section 5 of the Bar Association's Local Government Article so that the term "political subdivisions" would be substituted wherever the words "cities and boroughs" appear.

The State Affairs Committee of the Southeastern Pennsylvania Chapter, Americans for Democratic Action made a number of proposals:

1. The Legislature should have the power to determine the local governmental units within each county as well as the manner of creating them. No local governmental unit should contain fewer than 25,000 residents, and each unit should be governed by an elected, full-time chief executive and by an elected council whose members should be elected on a district basis and at large, with minority at-large representation guaranteed.
2. Counties and local governments should have the responsibility for all county and local functions including operation of the schools. Any or all local government functions should be assignable to the county government by majority vote of all voters in the county and in the local governmental units. Voters should also have the power to abolish local government units.
3. Voters of each local government and each county government should be empowered to modify, through referendum, the form of their governments, pro-

viding that such modification incorporates the principles of an elected chief executive and council. The legislature should be empowered to recognize by statute any existing city governments as having already exercised the option in whole or in part.

4. All employees and officials of county and local government should be salaried and all fees collected by them should be paid to the governmental unit which employs them.
5. The merit principle of employment should cover all employees except those who have been legislatively determined to hold policy making positions.

The Pennsylvania Home Builders' Association, in testimony presented at the Public Hearings on July 27, 1967, proposed the inclusion of provisions to the Constitution which would (1) modify the existing annexation laws "to facilitate the formation of stronger and larger units of local government," (2) provide that local governments "not impair the health, safety and welfare of its citizens through lack or inadequacy of such services as sewage collection and treatment facilities, water treatment and supply systems, police and fire protection, street maintenance and repair and lighting . . .", and (3) prohibit local government units from taking property for parks, recreational areas, school sites, etc. without just compensation.

Alternatives and Proposals

Other State Constitutions

Cities:

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Council:

SECTION 8. The governing body of a city shall be the council.

Charters:

SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

Extended Home Rule:

SECTION 10. The legislature may extend home rule to other boroughs and cities.

Home Rule Powers:

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Boundaries:

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Alaska, Article X

Art. LXXXVIII. The industrial development of cities and towns is a public function and the commonwealth and the cities and towns therein may provide for the same in such manner as the general court may determine.

Art. LXXXIX. Article II of the Articles of Amendment to the Constitution of the Commonwealth, as amended by Article LXX of said Articles of Amendment, is hereby annulled and the following is adopted in place thereof:—

Article II. Section 1. **Right of Local Self-Government.**—It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.

Section 2. **Local Power to adopt, revise or amend Charters.**—Any city or town shall have the power to adopt or revise a charter or to amend its existing charter through the procedures set forth in sections three and four. The provisions of any adopted or revised charter or any charter amendment shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

No town of fewer than twelve thousand inhabitants shall adopt a city form of government, and no town of fewer than six thousand inhabitants shall adopt a form of government providing for a town meeting limited to such

inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

Section 6. **Governmental Powers of Cities and Towns.**—Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

Section 7. **Limitations on Local Powers.**—Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections other than those prescribed by sections three and four; (2) to levy, assess and collect taxes; (3) to borrow money or pledge the credit of the city or town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law; provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section eight; nor shall the provisions of this article be deemed to diminish the powers of the judicial department of the commonwealth.

Section 8. **Powers of the General Court.**—The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters.

Subject to the foregoing requirements, the general court may provide optional plans of city or town organization and government under which an optional plan may be adopted or abandoned by majority vote of the voters of the city or town voting thereon at a city or town election; provided, that no town fewer than twelve thousand inhabitants may be authorized to adopt a city form of government, and no town of fewer than six thousand inhabitants may

be authorized to adopt a form of town government providing for a town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

Massachusetts, Article LXXXIX

Cities and villages; incorporation, taxes, indebtedness.

Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

Charters, resolutions, ordinances; enumeration of powers.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

Metropolitan governments and authorities.

Sec. 27. Notwithstanding any other provision of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. Wherever possible, such additional forms of government or authorities shall be designed to perform multi-purpose functions rather than a single function.

Governmental functions and powers; joint administration, costs and credits, transfers.

Sec. 28. The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately: share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Construction of constitution and law concerning counties, townships, cities, villages.

Sec. 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Michigan, Article VII

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

New Jersey, Article VII

Municipal Corporations Sec. 1. **Classification of.** Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

Sec. 2. **General and additional laws.** General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

Sec. 3. **Powers of.** Municipalities 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.

Sec. 7. **Local self-government.** Any municipality may frame and adopt or

amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Ohio, Article XVIII

National Authorities and Organizations

The following is Article VIII, "Local Government," from the *Model State Constitution*, Sixth Edition, 1963, of the National Municipal League:

Section 8.01. Organization of Local Government. The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) For the adoption or amendment of charters by any county or city for its own government, by a majority vote of the qualified voters of the city or county voting thereon, for methods and procedures for the selection of charter commissions, and for framing, publishing, disseminating and adopting such charters or charter amendments and for meeting the expenses connected therewith.

ALTERNATIVE PARAGRAPH: Section 8.01(3). Self-Executing Home Rule Powers. For the adoption or amendment of charters by any county or city, in accordance with the provisions of section 8.02 concerning home rule for local units.

Section 8.02. Powers of Counties and Cities. A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

ALTERNATIVE PROVISIONS FOR SELF-EXECUTING HOME RULE POWERS:

Section 8.02. Home Rule for Local Units

(a) Any county or city may adopt or amend a charter for its own government; subject to such regulations as are provided in this constitution

and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing, publishing and adopting a charter or charter amendments.

(b) Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of ten per cent of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than sixty days thereafter, or at a special election if authorized by law, the question "Shall a commission be chosen to frame a charter or charter amendments for the county [or city] of _____?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

(c) A petition to have a charter commission may include the names of five, seven or nine commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

(d) Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(e) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislature authority.

Section 8.03. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers and may revoke the transfer of any such function or power.

Section 8.04. County Government. Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the

exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than twenty-five per cent of the total population of the county, and (3) in the county outside of such city or cities.

Section 8.05. City Government. Except as provided in sections 8.03 and 8.04, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.

FURTHER ALTERNATIVE: A further alternative is possible by combining parts of the basic text of this article and parts of the foregoing alternative. If the self-executing alternative section 8.02 is preferred but not the formulation of home rule powers in alternative sections 8.03, 8.04 and 8.05, the following combination of sections will combine the self-executing feature and the power formulation included in the basic text:

Section 8.01. **Organization of Local Government,** with alternative paragraph (3).

Alternative Section 8.02. **Home Rule for Local Units.**

Section 8.02, renumbered 8.03. **Powers of Counties and Cities.**

National Municipal League,
Model State Constitution,
Sixth Edition, 1963

The next section quotes in full the *Model Constitutional Provisions for Municipal Home Rule*, of the American Municipal Association (now the National League of Cities), 1953.

Section 1—General Legislation

The legislature may act in relation to municipal corporations only by laws which are general in terms and effect.

Section 2—Incorporation and Corporate Changes

The legislature shall provide by law, general in terms and effect, for the incorporation and government of municipal corporations and the methods by which municipal boundaries may be altered, municipal corporations may be merged or consolidated and municipal corporations may be dissolved. The legislature shall, by such law, facilitate the extension of municipal boundaries to the end that municipal territory may readily be made to conform to the actual urban area.

Section 3—Classification; Optional Plans of Government.

The legislature may classify municipal corporations by grouping them into not more than four classes based upon population to be determined by the most recent census made under the authority of the United States or of this State. No other classification may be made but the legislature may, from time to time, change the grouping within the maximum limitation of four groups. Legislation in relation to municipal corporations in any class shall apply alike to all municipal corporations in that class. No class shall include less than two (or whatever minimum a particular state prefers) municipal corporations at the time it is established. Classification legislation shall provide for transition from class to class in keeping with population changes.

The legislature may, by a law applicable to all classes of municipal corporations or to a particular class, provide optional plans of municipal organization and government, under which an authorized optional plan may be adopted or abandoned by majority vote of the qualified voters of a municipal corporation voting thereon.

Section 4—Home Rule Charter Making

The qualified voters of any municipal corporation are granted power to adopt a home rule charter of government and to amend or repeal the same. The adoption of a charter or the amendment or repeal of a charter shall be proposed either by a resolution of the legislative body of a municipal corporation or by a charter commission of not less than seven members, elected by the qualified voters of the municipal corporation from their membership at large, pursuant to petition for such an election bearing the signatures of at least __ per centum of the qualified voters of the municipal corporation and filed with the clerk or other chief recording officer of the legislative body of the municipal corporation. The charter commission candidates in a number equal to the number to be elected, who receive the most votes, shall constitute the commission. On the death, resignation or inability of any member of a charter commission to serve, the remaining members shall elect a successor. The commission shall have authority to propose (1) the adoption of a charter, (2) amendment of a charter or particular part or parts of a charter, or (3) repeal of a charter, or any of these actions, as specified in the petition.

The legislature shall provide by statute for procedure, not inconsistent with the provisions of this section, necessary to effectuate this section, and may provide by statute for a number of charter commission members in excess of seven on the basis of population. In the absence of such legislation the legislative body of a municipal corporation in which the adoption, amendment or repeal of a charter is proposed shall provide by ordinance or resolution for that procedure and the number of charter commission members shall be seven. The legislative body may, if it defaults in the exercise of this authority, be compelled, by judicial mandate and at the instance of at least ten signers of a sufficient petition filed under this section, to exercise such authority.

All expenses of elections conducted under this section and all necessary or proper expenses of a charter commission shall be paid by the municipal corporation.

Section 5—Submission to Electors of Separate or Alternative Charter Provisions

Any part of a proposed home rule charter may be submitted for separate vote.

Alternative sections or articles of a proposed home rule charter may be submitted and the section or article receiving the larger vote shall, in each instance, prevail if a charter is adopted.

In the case of proposed charter amendments there may likewise be separate or alternative submission.

Section 6—Home Rule Charter Powers

A municipal corporation which adopts a home rule charter may exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute. This devolution of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

A home rule charter municipal corporation shall, in addition to its home rule powers and except as otherwise provided in its charter, have all the powers conferred by general law upon municipal corporations of its population class.

Charter provisions with respect to municipal executive, legislative and administrative structure, organization, personnel and procedure are of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to

judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

Section 7—Provision for Transition in Event of Charter Repeal

A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified voters a specification of the form of government under which the municipal corporation would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or one of such optional forms as may have been authorized by general law for municipalities of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government would take place in the event of repeal and make such other provision, as may be appropriate, to effect an orderly transition from home rule charter to non-home rule charter status.

Section 8—Publication of Proposed Charter, Charter Amendment or Repeal Proposition and Resolution

At least thirty days before an election thereon notice shall be given by publication in a newspaper of general circulation within the municipal corporation that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the clerk or other chief recording officer of the legislative body of the municipal corporation and that a copy will be furnished by him to any qualified voter or taxpayer of the municipal corporation upon request.

Section 9—Only One Charter Commission in Two Years

The qualified voters of a municipal corporation may not elect a charter commission more often than once in two years.

Section 10—Legislation Increasing Municipal Financial Burdens

State legislation requiring increased municipal expenditures may not become effective in a municipal corporation until approved by ordinance enacted by the legislative body of the municipal corporation, unless the legislation is enacted by two-thirds vote of all the members elected to each house of the legislature or funds sufficient to meet the increased municipal expenditure are granted to the municipal corporation by that legislation or separate legislation enacted at the same session of the legislature.

American Municipal Association
(now The National League of Cities),
Model Constitutional Provisions for Municipal Home Rule, 1953

Section 5. Laws may be enacted giving to cities or to cities of a particular class, authority to frame, adopt and amend charters for their organization and government.

Sproul Commission (1920)

Section 1—Incorporation and Corporate Changes

The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved.

Section 2—Optional Plans of Organization and Government

The General Assembly may, by general law, provide optional plans of municipal organizations and government under which an authorized optional plan may be adopted or abandoned by majority vote of the qualified electors of the city or borough voting thereon.

Section 3—Home Rule Charter Making

(a) The qualified electors of any city or borough may adopt, amend or repeal a home rule charter of government. The adoption, amendment or repeal of a charter shall be proposed either by resolution of the legislative body of the city or borough or by a charter commission of not less than seven members elected by the qualified electors of the city or borough from their membership pursuant to petition for such election, bearing the signatures of at least ten per cent of the qualified electors of the city or borough and filed with the chief recording officer of the legislative body of the city or borough. The legislative body of the city or borough shall by resolution direct the election board to provide for holding the election in accordance with the provision of the election laws. On the death, resignation or inability to serve of any member of a charter commission, the remaining members shall elect a successor. A charter commission may propose (1) the adoption of a charter, (2) amendment of a charter or particular part or parts of a charter, (3) repeal of a charter, or (4) any of these acts, as specified in the petition.

(b) The General Assembly shall provide by statute for procedure not inconsistent with the provisions of this section, and may provide by statute for a number of charter commission members in excess of seven on the basis of population. In the absence of such legislation, the legislative body of a city or borough in which the adoption, amendment or repeal of a charter is proposed shall provide by ordinance or resolution for the procedure; and the number of charter commission members shall be seven. The legislative body may, if it defaults in the exercise of this authority, be compelled by judicial mandate, at the instance of at least ten signers of a sufficient petition filed under this section, to exercise the authority.

(c) All expenses of elections conducted under this section and all proper expenses of a charter commission shall be paid by the city or borough.

(d) Every charter, charter amendment and charter repeal proposed shall be submitted to the vote of the electors of the city or borough in the manner provided by the election laws, and shall not become effective unless a majority of the electors voting on it votes in favor of it.

(e) Any part of a proposed home rule charter may be submitted for separate vote. Alternate sections or articles of a proposed home rule charter or proposed charter amendments may be submitted. The section or article receiving the larger vote, in each instance, shall prevail if the charter or amendment is adopted.

(f) A city or borough which adopts a home rule charter may exercise any power or perform any function which the General Assembly has power to devolve upon a non-home rule charter city or borough, so long as the power or function is not denied by statute nor by its home rule charter and it is within limitations as may be established by the statute. This devolution of power does not include the power to enact private or civil laws governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

(g) Charter provisions with respect to municipal executive, legislative and administrative structure and organization, and to the selection, compensation, terms and conditions of service, removal and retirement of municipal personnel are of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

(h) A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified electors a specification of the form of government under which the city or borough would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or one of such optional forms as may have been authorized by general law for cities or boroughs of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government shall take place in the event of repeal and make such other provisions as may be appropriate to effect an orderly transition from home rule charter to non-home rule charter status.

(i) At least thirty days before an election thereon, notice shall be given by publication in a newspaper of general circulation within the city or borough that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the chief recording officer of the legis-

lative body of the city or borough, and that a copy will be furnished by him to any qualified elector or taxpayer of the city or borough upon request.

(j) The qualified electors of a city or borough shall not elect a charter commission more often than once in four years.

Woodside Commission (1959)

B. Cities and Boroughs—GC*Section 5—**Incorporation, Optional Plans, Home Rule**

(a) The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which with the consent of the electors of the political subdivisions involved municipal boundaries may be altered and municipalities may be consolidated or dissolved.

(b) It may provide optional plans of municipal organization and government which may be adopted or repealed by majority vote of the qualified electors of the city or borough voting thereon.

(c) Cities or cities of any class and boroughs may be given the right and power to adopt, amend or repeal their own home rule charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations and regulations as may be imposed by the General Assembly.

Scranton Commission (1964)

B. Cities and Boroughs—Section 5—**Incorporation, Optional Plans, Home Rule**

(a) The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which, with the consent of the electors of the political subdivisions involved, municipal boundaries may be altered and municipalities may be consolidated or dissolved.

(b) It may provide optional plans of municipal organization and government which may be adopted or repealed by majority vote of the qualified electors of the city or borough voting thereon.

(c) Cities or cities of any class and boroughs may be given the right and power to adopt, amend or repeal their own home rule charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations and regulations as may be imposed by the General Assembly.

Pennsylvania Bar Association, *Project Constitution*
(also presented at Public Hearings, July 20, 1967)

Recommendation No. 1

In order to provide Philadelphia with a self-executing grant of substantive home rule powers, it is recommended that the second and third sentences of Section 1 of Article XV be amended to read as follows:

Cities of over 1 million population shall have the right and power to frame and adopt their own charters. Other cities of any particular class, may be given the right and power to frame and adopt their own charters.

It is further recommended that the following provisions be added to Section 1 of Article XV:

a. *Home Rule Powers.* The charter of any city adopted or amended in accordance with this provision may provide for a form or system of municipal government and for the exercise of any and all powers relating to its municipal functions, not inconsistent with the Constitution of the United States, the Constitution of this Commonwealth, or of laws of this Commonwealth which are general in effect.

b. *Home Rule Charter Powers.* Charter provisions with respect to municipal executive, legislative and administrative structure, organization, personnel, and procedures shall be of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

Recommendation No. 2

In order to assure adequate procedures for the adoption, amendment, revision, and repeal of a home rule charter, it is recommended that Section 1 of Article XV be amended by adding the following provision:

Home Rule Charter Procedures. The qualified voters of any city in a class which may be authorized to adopt a home rule charter of government shall have the power to adopt a home rule charter and to amend, revise or repeal the same. The adoption of a charter or the amendment, revision, or repeal of a charter shall be proposed either by a resolution of the legislative body of the city or by a charter commission of not less than seven members, elected by the qualified voters of the city from their membership at large, pursuant to a petition for such an election bearing the signature of at least 2 per cent (2%) of the qualified voters of the city and filed with the clerk or other chief recording officer of the legislative body of the city. The charter commission candidates in a number equal to the number to be elected, who receive the most votes, shall constitute the commission. On the death, resignation, or inability of any member of a charter commission to serve, the remaining members shall elect a successor. The commission shall have authority to propose (1) the adoption of a charter, (2) the amendment or revision of a charter or particular part or parts of a charter, or (3) repeal of a charter, or any of these actions as specified in the petition. The Legislature shall provide by statute for procedure, not inconsistent with the provisions of this section, necessary to implement this section, and may provide by statute for a number of charter commission members in excess of seven on the basis of population. In the absence of such legislation, the legislative body of the city in which the adoption, amendment, revision or repeal of a charter is proposed shall provide by ordinance or resolution for that procedure and the number of charter commission members shall be seven. The legislative body may, if it defaults in the exercise of this authority, be compelled by judicial mandate and at the instance of at least ten signers of a sufficient petition filed as provided for in this section, to exercise such authority. All expenses of elections conducted under this section and all necessary or proper expenses of a charter commission shall be paid by the city. Provided that, the qualified voters of a municipal corporation may not elect a charter commission more often than once in two years.

Recommendation No. 3

In order to provide an adequate transition if a home rule charter is repealed, it is recommended that Section 1 of Article XV be amended by adding the following:

Transition in the Event of Charter Repeal. A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified voters a specification of the form of government under which the municipal corporation would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or one of such optional forms as may have been authorized by general law for municipalities of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government would take place in the event of repeal and make such other provision, as may be appropriate, to effect an orderly transition from home rule charter status to the status specified in the proposition.

Recommendation No. 4

In order to clarify the procedure for permitting the electors to choose between alternative charter proposals, it is recommended that Section 1 of Article XV be amended by adding the following provision:

Submission to Electors of Separate or Alternative Charter Provisions: Any part of a proposed home rule charter may be submitted for separate vote. Alternative sections or articles of a proposed home rule charter may be submitted and the section or article receiving the larger vote shall, in each instance, prevail if a charter is adopted, except that the alternative choices provided shall apply to a choice between specific related provisions of the proposed charter dealing with the same substantive matter and shall not be related to other provisions in the charter or the charter as a whole. In the case of proposed charter amendments there may likewise be separate and alternative submission.

Recommendation No. 5

In order to assure the electors of adequate notice of referendum on a home rule charter, but protect them from cumbersome and costly proceedings, it is recommended that Section 1 of Article XV be amended by adding the following:

Publication of Proposed Charter, Charter Amendment or Repeal Proposition and Resolution: At least thirty days before an election thereon, the city clerk or other chief recording officer shall give notice by publication in a newspaper of general circulation within the municipal corporation that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the clerk or other chief recording officer of the legislative body of the municipal corporation and that a copy will be furnished by him to any qualified voter or taxpayer of the municipal corporation upon request. Such notification shall be considered to satisfy the requirements of adequate notification to the electorate

and no greater requirements shall be established by the Legislature or legislative body of the municipal corporation concerned.

Bureau of Municipal Research and Pennsylvania Economy League (Eastern Division), *Philadelphia and Constitutional Revision*, 1960

Article XV

SECTION 2. DEBTS INCURRED BY MUNICIPAL COMMISSIONS

No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government.

Historical Note

This provision in the 1874 Constitution was an effort to prevent the state legislature from authorizing local improvements, appointing commissions to administer them, and obliging the city concerned to be responsible for payment of expenditures and/or debts incurred.

Interpretation of Provision

The stipulated prohibition in section 2 was designed specifically to stop a common practice in the administration of a city's public projects. Often, interests that were defeated in the city council would appeal to the state for a special law providing for the construction or development and for the administration of the project by a commission appointed by the legislature. Resultant expenditures or incurred debts became the city's responsibility without authorization by the city council itself. In Philadelphia, for example, a commission had been appointed by the legislature to build a bridge across the Schuylkill River at a cost of over one million dollars. Similarly, another bridge was authorized at the request of some passenger railway companies after they were rejected by city council. In both cases the city was forced to pay the bill although it could exercise no control over such expendtiures.

Article IX, Section 10 of the 1874 Constitution addresses itself to the liquidation of municipal debts in general, with a mandatory provision for the collection of an annual tax sufficient to pay the interest and principal within thirty years. Because the Constitution includes this kind of general provision and in light of present day policy, Section 2 of Article XV would seem to be obsolete.

Comment

Prior Pennsylvania Commissions

The Sproul Commission in its 1920 report stated its belief that the Constitution should express a broader principle—that "a municipality shall not in-

cur a debt otherwise than by the borrowing of money unless there has been an appropriation to pay the debt." Another section of the Sproul Commission's proposed Constitution (Article XIII, Section 21) would prohibit the General Assembly from delegating "to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

The Woodside Commission recommended repeal of section 2 because it felt the provision expressed a basic financial policy which was appropriately a policy determination at the statutory level.

The Scranton Commission recommended the repeal of this section.

National Authorites and Organizations.

Because of the unique and specific nature of this provision, there is no directly comparable provision in the model state constitutions of either the American Municipal Association or the National Municipal League. In general, modern state constitutional theory strives to eliminate such details from the body of the constitution.

While not specifically treating the subject of municipal commissions, the Advisory Commission on Intergovernmental Relations suggests that the legislature be given the permissive power to pass laws regulating the taxing and borrowing powers of local governments.

Other States.

No other state constitution contains any similar provision concerning municipal commissions.

Preparatory Committee Hearings and Other.

Both the Pennsylvania Bar Association and the Bureau of Municipal Research-Pennsylvania Economy League (Eastern Division) recommended repeal of this section. None of the other organizations that testified before the Committee addressed themselves to this section.

Alternatives and Proposals

No comparable provision appears in the constitutions of other states or in any of the model constitutional provisions recommended by recognized national authorities. There is general consensus among the prior Pennsylvania commissions and other Pennsylvania groups that have commented on this section that the provision is obsolete and should be repealed.

Article XV
SECTION 3—CITY SINKING FUND

Present Provision

Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt.

Historical Note

Prior to the addition of this section in the 1874 Constitution, sinking fund provisions, as they applied to cities, were imposed by the legislature in special acts. The provision of this concept in a general section of the Constitution's local government article developed from the experience of the mid-1800's when municipalities indiscriminately pledged their credit for various kinds of extravagant speculative enterprises. No one paid much attention to repayment obligations; municipal credit became virtually worthless. While this constitutional provision mandated only cities to create sinking funds, statutory provisions extended the required maintenance of such funds to all political subdivisions.

Interpretation of Provision

The sinking fund is merely a device for the regular and orderly retirement of loans as they fall due. At one time sinking funds would accumulate until the debts matured; current practice, however, permits retiring the debt whenever the funds become available. Payments into the sinking fund are usually obtained from general revenues, although special revenues may be pledged for sinking fund purposes.

Historically, the sinking fund device has revealed some of its own deficiencies. In particular, there is the danger that such funds may be used for other than the original purpose. The raiding of sinking funds by weak municipal governments often occurs in order to cover current expenses.

A more modern accounting procedure for financing bonded indebtedness is the use of serial bonds (rather than term bonds). This is a definitive and prearranged plan by which the bonds mature in rotation and at specified intervals and rates. The retirement rate, which can be selected by the municipality, may stipulate constant, increasing or decreasing debt payments. The use of serial bonds which are retired according to a precise schedule negates the need for an accumulated sinking fund; serial bonds are redeemed from annual revenues. In recent years serial bonds have become increasingly popular because they reduce considerably the cost and paperwork of administration.

It should be noted here that, in Pennsylvania, the Municipal Borrowing Act of 1941[52] is the general statute regulating the manner in which munici-

palities and other civil subdivisions may borrow money and issue bonds. This Act requires all political subdivisions except Philadelphia to use serial bond financing.[53]

Related provisions of the Pennsylvania Constitution are Section 8 of Article IX which deals generally with municipal debt limits but also includes special provisions relating to Philadelphia, governing sinking funds; and Section 10 of Article IX which requires civil subdivisions which incur debt to provide for an annual tax sufficient to pay interest and principal within thirty years.

Comment

Prior Pennsylvania Commissions

Both the Woodside and the Scranton Commissions recommended that this section be repealed. The Woodside Commission commented:

> The present Section 3 requires that every city create a sinking fund which shall be inviolably pledged for the payment of its funded debt. This type of requirement is identified with term bonds, all of which are payable at one maturity date. In contemporary municipal finance, term bonds have been almost completely supplanted by serial bonds, which mature from year to year, with the expectation of current provision for current installments of principal and interest. This largely obviates the need for the type of sinking fund contemplated by the present Section 3. At most, a policy of this sort is something for legislative determination. The section is, accordingly, recommended for repeal.

National Authorities and Organizations.

The model state constitutions of the National Municipal League and the American Municipal Association do not discuss the subject of sinking funds. The NML Model proposes an article on Finance (VII) which deals only with *state* financing and debt. The Local Government Article (VIII) does not deal with local finance except in the most general sense when it stipulates that the legislature shall provide by general law for the government of counties, cities and other civil divisions. The AMA Model Constitutional Provisions for Municipal Home Rule do not treat separately the subject of sinking funds. The Advisory Commission in Intergovernmental Relations recommends a general constitutional section which authorizes the legislature to pass laws regulating the taxing and borrowing powers of local governments.

Other States.

Only a few other state constitutions deal specifically with the subject of municipal sinking funds, and then usually as part of more general provisions relating to local government borrowing. In general such details of debt management are left to state legislative determination.

Preparatory Committee Hearings and Other.

The Pennsylvania Bar Association recommended repeal of this section. No other organization that testified before the Preparatory Committee addressed itself to this section, probably for the reason that the Municipal Borrowing Act, cited above, makes the provision obsolete in practice.

The Bureau of Municipal Research-Pennsylvania Economy League (Eastern Division) has also recommended repeal of Section 3.

Alternatives and Proposals

Other states treat the subject of sinking funds as noted above under "Comment." The models of recognized national authorities do not contain any provision similar to the Pennsylvania provision.

There is general consensus among the prior Pennsylvania commissions and other Pennsylvania groups that have commented on this section that the provision should be repealed.

Article XV
SECTION 4—CONSOLIDATION IN ALLEGHENY COUNTY

Present Provision

The General Assembly is hereby authorized to provide for the consolidation of the county, poor districts, cities, boroughs and townships of the county of Allegheny, and the offices thereof, into a consolidated city and county, with the constitutional and legal capacity of a municipal corporation, to be known either as "Greater Pittsburgh" or "Metropolitan Pittsburgh" or "City of Pittsburgh (Metropolitan)," and to provide for a charter for its government, and to fix the name thereof in the charter. The said charter shall be submitted to the electors of said county at a special or general election to be provided for therein. If the majority of the electors voting thereon in the county as a whole, and at least a majority of the electors voting thereon in each of a majority of the cities, boroughs and townships thereof, vote in the affirmative, the act shall take effect for the whole county.

If rejected, the said charter may be resubmitted by the county commissioners to the electors from time to time, but not oftener than once in two years, until adopted. Until a charter shall have been adopted as aforesaid, the General Assembly shall have the power to amend or modify the said charter, in which event the charter as amended or modified shall be submitted and resubmitted as aforesaid.

It shall be competent, subject to the police power of the State, for the Legislature to provide in said charter:

I. For the exercise by the consolidated city of all the powers and duties vested in the county of Allegheny, and the poor districts thereof, and such

other powers appropriate to a municipality as may be specified therein, except such powers as are specifically reserved by this section to the municipal divisions herein provided for.

II. For the election of a board of commissioners, by districts and/or at large, by the electors of the consolidated city, the number to be fixed by the charter, in lieu of present county commissioners, in which board shall be vested all the powers of the consolidated city except as otherwise provided in the charter.

III. For the organization of a government for the consolidated city, and for the appointment and/or election of any officers thereof, created by the Constitution, or otherwise, and to provide for their powers and duties.

IV. For the organization and reorganization of all courts, other than those of record, in the consolidated city, and for the appointment and/or election of the judges and officers thereof, and for the procedure thereof, including the right to provide that said court or courts be courts of record, which courts may exercise the jurisdiction, powers and rights of the magistrates, aldermen and justices of the peace, and such other jurisdiction and powers as may be conferred by law.

V. For the transfer to, and the assumption by, the consolidated city of the property and indebtedness of the county of Allegheny, and the poor districts thereof, and of such property and indebtedness of the cities, boroughs and townships thereof as relate to the powers and duties of said consolidated city, and to provide for an equitable adjustment and arrangement with respect thereto and for the payment of such indebtedness, and, for this purpose, any taxation therein, arising thereby, shall be uniform taxation within the meaning and intent of other provisions of the Constitution.

VI. For the assessment of property for taxation, the levying and collecting of taxes, and the payment of the cost of any public or municipal improvement, in whole or in part, by special assessment upon abutting and non-abutting property specially benefited thereby.

VII. For the creation, by the board of commissioners, of districts for the purpose of regulating the location, height, area, bulk and use of building and premises.

VIII. For the creation of indebtedness by the consolidated city within the limits now or hereafter imposed upon cities by other provisions of the Constitution. Such power to create indebtedness shall not impair the power of the municipal divisions, within the consolidated city, to create indebtedness within the limits now or hereafter imposed upon such municipalities by other provisions of the Constitution.

IX. For the creation, by the board of commissioners, of special districts for the purpose of carrying on or carrying out any public or municipal improvement, not for the exclusive benefit of any one municipal division; and for the payment of the cost and maintenance of such property or improvement, or

any part thereof, special taxes may be levied throughout such special districts, respectively, separate and apart from the general consolidated city tax.

X. For the exercise of such powers by the consolidated city as may be necessary to enable it to carry on and carry out such municipal and metropolitan powers and functions as the General Assembly may deem advisable and expedient and for the general welfare of the said city and its inhabitants:

Provided, however, That it is the intent of this section that substantial powers be reserved to the cities, boroughs and townships situated in Allegheny County. To this end the charter shall provide for the continued existence of the said cities, boroughs and townships, as municipal divisions of the consolidated city, under their present names and forms of government, subject to the laws now or hereafter provided for government of municipalities of their respective forms and classes and to the powers conferred upon the consolidated city by the charter, and with their present boundaries. Any two or more of said municipal divisions, or portions thereof, may, with the consent of a majority of the electors voting thereon in each of such divisions at any special or general election, be united to form a single municipal division. Wherever a portion of a municipal division is involved, the election shall be held in the entire municipal division of which the said portion is a part.

The said municipal divisions shall have and continue to have the following powers:

I. The constitutional and legal capacity of municipal corporations.

II. The power to levy and collect taxes and to incur indebtedness, subject to the limitations which are or may be imposed by law upon cities, boroughs or townships of corresponding classification, for the purpose of carrying out any lawful power of said divisions.

III. The power to acquire, own, construct, maintain, operate or contract for all kinds of public property, works, improvements, utilities or services, which shall be within the municipal division. Subject, however, to the right and power of the consolidated city to construct, acquire, maintain and/or operate public works, improvements, utilities and services of all kinds, including through streets, highways and/or bridges, for the use and benefit of the consolidated city and its inhabitants.

IV. The power to maintain a local police force and local fire department, either paid or volunteer, with the necessary buildings, appurtenances and equipment therefor, which may be independent of or supplemental to the police force and fire department of the consolidated city.

V. All other powers not specifically granted by the charter to the consolidated city: Provided, however, That a municipal division may surrender, by a majority vote of the electors voting thereon at any general or special election, any of its powers to the consolidated city, subject to the acceptance thereof by the board of commissioners.

After a charter has been adopted as aforesaid, it may be amended as follows:

I. In matters which relate only to the powers of the consolidated city and which do not reduce the powers of any one or more of the municipal divisions thereof by the General Assembly: Provided, however, That any amendment which changes or modifies the form of government of the consolidated city, or the number of or manner of election of the commissioners thereof, shall not be effective until such amendment shall have been ratified by a majority of the electors of the consolidated city voting thereon at a general or special election, to be provided for in said amendment.

II. In matters which reduce the powers of any one or more of the municipal divisions of the consolidated city, such amendment, enacted by the General Assembly, shall not be effective until it shall have been ratified at a general or special election, to be provided for in said amendment, by a majority of the electors voting thereon in all of the municipal divisions affected thereby, and by a majority of the electors voting thereon in each of a majority of said municipal divisions so affected. (Amendment of November 7, 1933.)

Historical Note

The present section has its roots in a 1923 act of the General Assembly establishing a commission in Allegheny County to study and make recommendations on the subject of municipal consolidation in that county.[54] The 1925 report of the commission recommended a constitutional amendment authorizing the legislature to grant to the people of the county a home rule charter with the specification that under such a charter, the corporate rights and powers of all the constituent municipalities would be preserved.

A constitutional amendment, incorporating such a specification, was drawn, adopted by successive sessions of the General Assembly, and approved by the voters in 1928. In pursuance of the authorization granted by the amendment, the legislature passed a charter bill which, in accordance with the provisions of the amendment, would become effective upon approval of a majority of the electors of the county as a whole and a *two-thirds majority in a majority of municipalities* (emphasis supplied).[55]

Whether the unusual electoral requirement, often referred to as the "joker," was inserted into the amendment through inadvertence or somewhat malicious intent has been a matter of debate,[56] but, in any event, the charter failed to meet the requirement when submitted to the voters of Allegheny County, although approved by 68% of the total voting thereon.[57] A new amendment, eliminating the "joker," and requiring only a majority in the county and a majority in a majority of the municipalities, was adopted by sessions of the General Assembly in 1931 and 1933, and became the present section of the Constitution through approval by the voters in 1933.

Subsequent to the adoption of the 1933 amendment, the Commission authorized by the 1923 act presented a new charter for legislative approval, but their effort failed when the House and Senate of the 1935 Session of the General Assembly passed different versions and the bill died in conference committee.

Interpretation of Provision

The title of the present section is misleading so far as the general use of the term "consolidation" is concerned. In the common use of the word, the section authorizes not consolidation but a form of "federation," the important distinction being that the former involves the elimination of existing units, in fact if not in name, while "federation" emphasizes the continuance of existing political subdivisions both in entity and substantial power.

The present section authorizes statutory creation of a new municipal corporation, subject to electoral approval, to exercise the powers and duties of the County of Allegheny, but it does not provide for the abolition of the county. The charter referred to above, which failed of voter approval, contained no provision, for example, altering or changing the "row office" structure of the county. Moreover, the present section makes no provision whatever for the elimination of any of the cities, boroughs, or townships in the county. In fact, under Paragraph X and its subparagraphs of the present section, the municipal subdivisions are guaranteed their continued existence and powers in a manner which, in effect, assures a constitutional guarantee of home rule.

The principle of federation is made rather explicit by the provision of the present section which, in effect, enumerates the range of powers of the consolidated city and reserves to the municipal subdivisions thereof all powers provided by law for their respective municipal forms and classes and not conferred upon the consolidated city.

Finally, the present section authorizes charter provisions permitting municipal subdivisions, upon the approval of their electorate, to combine, or to transfer to the consolidated city any of their powers subject to acceptance thereof by the board of commissioners of the consolidated city.

Comment

Prior Pennsylvania Commissions

The Earle Commission (1935) recommended simply that "the Legislature should be given the power to enact charters for metropolitan areas such as that of Pittsburgh."

The Woodside Commission (1959) recommended repeal of this section on the following grounds:

(This) is a very detailed section, which represents a constructive attitude toward the problems of local government in a major metropolitan area. It is, however, an enabling provision, which has not been employed and which, in some respects, the times have outrun. The General Assembly, it is believed, would have broad authority to pave the way for new governmental arrangements in metropolitan areas under the constitution as proposed to be modified. It is considered desirable, then, to supersede the present Section 4.

The Scranton Commission on Constitutional Revision (1964) recommended the repeal of this section.

National Authorities and Organizations.

The National Municipal League's Model State Constitution deals generally with the subject of city-county consolidation. Section 8.01 authorizes the legislature to provide by general law for the government of counties, cities, and other civil divisions and for methods of merging, consolidating and dissolving such civil divisions. In its alternate provisions for self-executing home rule powers, the Model provides for transfer of functions between counties and cities (Section 8.03); and for county charters providing for the exercise by the county, in all or part of its area, of powers vested in cities and other subdivisions, provided that any charter vesting such powers in the county shall become effective only on approval by a majority voting in the county, in any city containing more than 25 percent of the total population of the county, and in the county outside such cities (Section 8.04). For these provisions, see "Alternatives and Proposals," this section.

In a recent report, the Advisory Commission on Intergovernmental Relations discusses various approaches to increase local government's capabilities in coping with today's area-wide problems, including inter-governmental agreements, metropolitan councils, the urban county, transfers of functions, metropolitan special districts, city-county consolidation, and federation. The following excerpt from the section dealing generally with the urban county is relevant to the Allegheny County provision in the Pennsylvania Constitution.[58]

Where the boundaries of a county approximate the boundaries of a metropolitan area, which is the case in more than half the metropolitan areas in the country (primarily the smaller ones), the transformation of the county into a unit of urban government can mean the provision of areawide services without any basic changes in geographical jurisdictions of existing units. It thus provides better control over areawide problems and a better relationship between taxes and benefits at the same time that local responsibility for non-areawide services is preserved. The urban county makes available economies of larger scale administration. Consolidation of functions can result in the elimination of duplication where the county and the municipalities are providing similar services, such as police and sheriff, or conducting various public welfare activities.

Other States.

The federation approach expressed in the Pennsylvania constitutional provision represents one important device whereby the several local governments contained within a metropolitan county can deal on an area basis with the common urban problems confronting them. The Pennsylvania provision is especially noteworthy for its early recognition, almost forty years ago, of the need to devise innovative intergovernmental arrangements for the more effective and efficient provision of area-wide programs and services.

For comparison with Pennsylvania, the following excerpt from the study by the Advisory Commission on Intergovernmental Relations describes the general pattern of state constitutional treatment of the problem of the urban or metropolitan county:

> The reorganization of county government to keep pace with urbanization is hindered considerably by State constitutional restrictions that prevent counties from providing urban services and raising revenues to finance them. States vary with respect to the straitjacket they have placed on their counties. The most liberal toward their counties have county home rule provisions in their constitutions, statutory authorization of optional county charters, or general statutory grants to counties to perform new functions and reorganize their structure. Thirteen States have constitutional home rule for their counties: California, Maryland, Ohio, Texas (counties over 62,000 population), Missouri (counties over 85,000), Louisiana (for East Baton Rouge and Jefferson Parishes only), Washington, Florida (for Dade County only), Minnesota, New York, Oregon, Alaska (for boroughs), and Hawaii. Six States have laws authorizing optional county charters: Virginia, Montana, New York, North Carolina, North Dakota, and Oregon. California has been outstanding in granting counties structural flexibility through general statutes. But even where States have liberalized their provisions on county organization and functions, communities have not always made full use of their powers.
>
> Dade County, Fla., and the California counties are illustrative of counties with extensive urban functions. They also represent two extremes of urban approaches: the assumption of certain urban functions by the county practically overnight in Dade County, and the gradual assumption of functions through intergovernmental agreements over a long period in California. Dade County is additionally interesting as a two-tier government in a metropolitan area, which has led some to consider it a "federation" approach to reorganization of local governments in metropolitan areas."[59]

The "federation" approach of the Florida constitutional provision for the Dade County "central metropolitan government" makes that provision the most directly comparable to the Pennsylvania provision on Allegheny County.

For a sample of comparable provisions of other state constitutions, see "Alternatives and Proposals," in this section. For a more complete discussion of matters touched on here, see the section on Interlocal Relations in Chapter Five of this Manual.

Preparatory Committee Hearings and Other.

Only the Pennsylvania Bar Association, of the organizations that testified before the Preparatory Committee, addressed itself directly to the present

Section 4. The Association recommended repeal of the section inasmuch as its general substance, municipal-county consolidation, is covered in the Association's proposed Section 2, Article XIV, dealing with optional plans of county government. That proposed section permits the General Assembly to provide optional plans for county government which may be adopted by majority vote in the county, and if the plan involves the elimination of existing political subdivisions, by majority vote in each of a majority of the political subdivisions which would be eliminated.

Alternatives and Proposals

Other State Constitutions

Sec. 13. **Agreements; transfer of powers.** Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Alaska, Article XI

Sec. 6. **Municipal corporations formed under general laws.** Corporations for municipal purposes shall not be created by special laws; but the Legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed; and the Legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns so incorporated.

California, Article XI

Article XX. City and County of Denver and Other Home Rule Cities and Towns

Sec. 1. **Incorporated.** The municipal corporation known as the city of Denver, and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver." By that name said corporation shall have perpetual succession, and shall own, possess and hold all property, real and personal, theretofore owned, possessed or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed or held by the said county of Arapahoe, and shall assume, manage and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall ac-

quire all benefits, and shall assume and pay all bonds, obligations and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold and enjoy, or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct and operate, water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for the use of said city and county and the inhabitants thereof, and any such systems, plants or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers of purposes, as may by the charter be provided.

The general annexation and consolidation statutes of the state shall apply to the city and county of Denver to the same extent and in the same manner that they would apply to the city of Denver if it were not merged, as in this amendment provided, into the city and county of Denver. Any contiguous town, city or territory hereafter annexed to or consolidated with the city and county of Denver, under any of the laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

Colorado, Article XIX

Sec. 9 **Legislative power over the city of Jacksonville and Duval county.** The Legislature shall have power to establish, alter or abolish, a Municipal corporation to be known as the City of Jacksonville, extending territorially throughout the present limits of Duval County, in the place of any or all county, district, municipal and local governments, boards, bodies and officers, constitutional or statutory, legislative, executive, judicial, or administrative,

and shall prescribe the jurisdiction, powers, duties and functions of such municipal corporation, its legislative, executive, judicial and administrative departments and its boards, bodies and officers; to divide the territory included in such municipality into subordinate districts, and to prescribe a just and reasonable system of taxation for such municipality and districts; and to fix the liability of such municipality and districts. Bonded and other indebtedness, existing at the time of the establishment of such municipality, shall be enforceable only against property theretofore taxable therefor. The Legislature shall, from time to time, determine what portion of said municipality is a rural area, and a homestead in such rural area shall not be limited as if in a city or town. Such municipality may exercise all the powers of a municipal corporation and shall also be recognized as one of the legal political divisions of the State with the duties and obligations of a county and shall be entitled to all the powers, rights and privileges, including representation in the State Legislature, which would accrue to it if it were a county. All property of Duval County and of the municipalities in said county shall vest in such municipal corporation when established as herein provided. The offices of Clerk of the Circuit Court and Sheriff shall not be abolished but the Legislature may prescribe the time when, and the method by which, such offices shall be filled and the compensation to be paid to such officers and may vest in them additional powers and duties. No county office shall be abolished or consolidated with another office without making provision for the performance of all State duties now or hereafter prescribed by law to be performed by such county officer. Nothing contained herein shall affect Section 20 of Article III of the Constitution of the State of Florida, except as to such provisions therein as relate to regulating the jurisdiction and duties of any class of officers, to summoning and impanelling grand and petit jurors, to assessing and collecting taxes for county purposes and to regulating the fees and compensation of county officers. No law authorizing the establishing or abolishing of such Municipal corporation pursuant to this Section, shall become operative or effective until approved by a majority of the qualified electors participating in an election held in said County, but so long as such Municipal corporation exists under this Section the Legislature may amend or extend the law authorizing the same with referendum to the qualified voters unless the Legislative Act providing for such amendment or extension shall provide for such referendum.

Sec. 10. **Legislative power over city of Key West and Monroe county.** The Legislature shall have power to establish, alter or abolish, a Municipal corporation to be known as the City of Key West, extending territorially throughout the present limits of Monroe County, in the place of any or all county, district, municipal and local governments, boards, bodies and officers, constitutional or statutory, legislative, executive, judicial, or administrative, and shall prescribe the jurisdiction, powers, duties and functions of such municipal corporation, its legislative, executive, judicial and administrative depart-

ments and its boards, bodies and officers; to divide the territory included in such municipality into subordinate districts, and to prescribe a just and reasonable system of taxation for such municipality and districts; and to fix the liability of such municipality and districts. Bonded and other indebtedness, existing at the time of the establishment of such municipality, shall be enforceable only against property theretofore taxable therefor. The Legislature shall, from time to time, determine what portion of said municipality is a rural area, and a homestead in such rural area shall not be limited as if in a city or town. Such municipality may exercise all the powers of a municipal corporation and shall also be recognized as one of the legal political divisions of the State with the duties and obligations of a county and shall be entitled to all the powers, rights and privileges, including representation in the State Legislature, which would accrue to it if it were a county. All property of Monroe County and of the municipality in said county shall vest in such municipal corporation when established as herein provided. The offices of Clerk of the Circuit Court and Sheriff shall not be abolished but the Legislature may prescribe the time when, and the method by which, such offices shall be filled and the compensation to be paid to such officers and may vest in them additional powers and duties. No county office shall be abolished or consolidated with another office without making provision for the performance of all State duties now or hereafter prescribed by law to be performed by such county officer. Nothing contained herein shall affect Section 20 of Article III of the Constitution of the State of Florida, except as to such provisions therein as relate to regulating the jurisdiction and duties of any class of officers, to summoning and impanelling grand and petit juries, to assessing and collecting taxes for county purposes and to regulating the fees and compensation of county officers. No law authorizing the establishing or abolishing of such Municipal corporation pursuant to this Section shall become operative or effective until approved by a majority of the qualified electors participating in an election held in said County, but so long as such Municipal corporation exists under this Section the Legislature may amend or extend the law authorizing the same without referendum to the qualified voters unless the Legislative Act providing for such amendment or extension shall provide for such referendum.

Sec. 10A. **Assessment of state, county, municipal, etc., taxes in Monroe county.** (1) From and after January 1, 1956, the county tax assessor in the County of Monroe, State of Florida, shall assess all property for all state, county, school and municipal taxes to be levied in the county by the state, county, county school board, school district, special tax school districts, port districts, drainage districts, and any other taxing districts, and municipalities of the county.

(2) The Legislature shall at the legislative session in 1955 and from time to time thereafter, enact laws specifying the powers, functions, duties and compensation of the county tax assessor, designated in the first paragraph of

this section, and shall likewise provide by law for the extension on the assessment roll of the county tax assessor of all taxes levied by the state, county, county school board, school districts, special tax school districts, port districts, drainage districts, and any other taxing districts and municipalities whose taxes may be assessed by the county tax assessor pursuant to the first paragraph of this section.

Sec. 11. **Dade county, home rule charter.** (1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

(a) Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and to do everything necessary to carry on a central metropolitan government in Dade County.

(c) May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Dade County.

(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County.

(e) May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature, except the Superintendent of Public Instruction and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerk thereof although such charter may create new courts and judges and clerks thereof with jurisdiction

to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

(g) Shall provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.

(h) May change the name of Dade County.

(i) Shall provide a method for the recall of any commissioner and a method for initiative and referendum, including the initiation of and referendum on ordinances and the amendment or revision of the home rule charter, provided, however, that the power of the Governor and Senate relating to the suspension and removal of officers provided for in this Constitution shall not be impaired, but shall extend to all officers provided for in said home rule charter.

(2) Provision shall be made for the protection of the creditors of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

(3) This home rule charter shall be prepared by a Metropolitan Charter Board created by the Legislature and shall be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Until a home rule charter is adopted the Legislature may from time to time create additional Charter Boards to prepare charters to be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Such Charter, once adopted by the electors, may be amended only by the electors of Dade County and this charter shall provide a method for submitting future charter revisions and amendments to the electors of Dade County.

(4) The County Commission shall continue to receive its pro rata share of all revenues payable by the state from whatever source to the several counties and the state of Florida shall pay to the Commission all revenues which would have been paid to any municipality in Dade County which may be abolished by or in the method provided by this home rule charter; provided, however, the Commission shall reimburse the comptroller of Florida for the expense incurred if any, in the keeping of separate records to determine the amounts of money which would have been payable to any such municipality.

(5) Nothing in this section shall limit or restrict the power of the Legis-

lature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

(7) Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Railroad and Public Utilities Commission or of any other state agency, bureau or commission now or hereafter provided for in this Constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in Dade County as shall be conferred upon them in regard to other counties.

(8) If any section, subsection, sentence, clause or provisions of this section is held invalid as violative of the provisions of Section 1 Article XVII of this Constitution the remainder of this section shall not be affected by such invalidity.

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade

County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

Florida, Article VIII

Paragraph VII. **Consolidation of governments; submission to voters.** The general Assembly may provide by general law optional systems of consolidated county and municipal government, providing for the organization and the powers and duties of its officers. Such optional systems shall become effective when submitted to the qualified voters of such county and approved by a majority of those voting.

Georgia, Section I

Sec. 31. **Recognition of city of St. Louis as now existing.** The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law.

Sec. 32(a). **Amendment of charter of St. Louis.** The charter of the city of St. Louis now existing, or as hereafter amended or revised, may be amended from time to time by proposals therefor submitted by the law-making body of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and accepted by three-fifths of the qualified electors voting for or against each of said amendments so submitted. Any such amendments so accepted shall take effect immediately, except as therein otherwise provided.

Sec. 32(b). **Revision of charter of St. Louis.** The law-making body of the city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new or revised charter of the city, which shall be in harmony with the Constitution and laws of the state, and shall provide, among other things for a chief executive and a house or houses of legislation to be elected by general ticket or by wards. Such new or revised charter shall be submitted to the qualified voters of the city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of the qualified voters voting at the election ratify the new or revised charter, then said charter shall become the organic law of the city and shall take effect, except as otherwise therein provided, sixty days thereafter, and supersede the old charter of the city and amendments thereto.

Sec. 33. **Certification, recordation, and deposit of amendments and revised charter; judicial notice.** Copies of any new or revised charter of the City of St. Louis or of any amendments to the present, or to any new or revised

charter, with a certificate thereto appended, signed by the chief executive and authenticated by the seal of the city, setting forth the submission to and ratification thereof, by the qualified voters of the city shall be made in duplicate, one of which shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the recorder of deeds of the city, shall be deposited among the archives of the city, and thereafter all courts of this state shall take judicial notice thereof.

Missouri, Article VI

Sec. 7. **Form of local government.** The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; Provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved.

Montana, Article XVI

(c) Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.

(h) (1) Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless ap-

proved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referendum by a majority of the votes cast thereon in all the villages so affected considered as one unit.

(2) After the adoption of an alternative form of county government by a county, any amendment thereof by act of the legislature or by local law which abolishes or creates an elective county office, changes the voting or veto power of or the method of removing an elective county officer during his term of office, abolishes, curtails or transfers to another county officer or agency any power of an elective county officer or changes the form or composition of the county legislative body shall be subject to a permissive referendum as provided by the legislature. (As amended 1963)

New York, Article IX

National Authorities and Organizations

Section 8.01. **Organization of Local Government.** The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon:

(3) For the adoption or amendment of charters by any county or city for its own government, by a majority vote of the qualified voters of the city or county voting thereon, for methods and procedures for the selection of charter commissions, and for framing, publishing, disseminating and adopting such charters or charter amendments and for meeting the expenses connected therewith.

Section 8.03. **Powers of Local Units.** Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers, and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county

or to a city within its boundaries or adjacent thereto any of its functions or powers and may revoke the transfer of any such function or power.

Section 8.04. **County Government.** Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than twenty-five per cent of the total population of the county, and (3) in the county outside of such city or cities.

National Municipal League,
Model State Constitution,
Sixth Edition 1963 (excerpts)

Pennsylvania Proposals

No specific revisions of this section have been proposed by prior Pennsylvania commissions or by any of the organizations that testified before the Preparatory Committee. The Earle Commission (1935) did recommend that the General Assembly be empowered to enact charters for metropolitan areas such as that of Pittsburgh.

As noted on pp. 145–146, both the Woodside Commission (1959) and the Scranton Commission (1964) recommended repeal of this section.

Article XV,
SECTION 5—ACQUISITION OF LAND FOR HIGHWAY CONSTRUCTION

Present Provision

The General Assembly may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating of highways or streets connecting with bridges crossing streams, or tunnels under streams which form boundaries between this and any other state, but the additional land and property, so authorized to be taken, shall not be more than sufficient to form suitable building sites on

such highways or streets. Nor shall the authority hereby conferred be exercised in connection with the laying out, widening, extending or relocating of any highway or street at a point more than three miles distant from the approach to any such bridge or tunnel. After so much of the land and property has been appropriated for such highways or streets as is needed therefor, the remainder may be sold or leased and any restrictions imposed thereupon which will preserve or enhance the benefit to the public of the property actually needed for the aforesaid public use. (As added by amendment of November 7, 1933.)

Historical Note

According to the Bureau of Municipal Research—Pennsylvania Economy League (Eastern Division), "this provision, adopted as an amendment to the Constitution in 1933, marked the culmination of a twenty-year effort to establish in the Constitution a base for the principle of excess condemnation. The provision was designed primarily at the instigation of Philadelphia interests to permit the use of excess condemnation in connection with the approaches to the Delaware River Bridge (later renamed the Benjamin Franklin Bridge), which was built in 1926. The use of excess condemnation under the amendment is restricted to the cities of Philadelphia, Chester, and Easton, and there only for highways leading to bridges and tunnels over the Delaware River and within a three-mile radius of such bridges and tunnels."[60]

In terms of prior history, the Bureau reports that, in 1907, the General Assembly passed a law (P. L. 466) authorizing cities to acquire and dispose of "in an equitable manner" more land than was actually needed for a public improvement. In the litigation following enactment of this law, a lower court opinion upheld the Act in principle, though it rendered an adverse decision on procedural grounds.[61] On appeal, the Pennsylvania Supreme Court six years later declared the Act unconstitutional.[62]

The issue was revived before the 1920 Commission on Constitutional Revision (the Sproul Commission), and after considerable debate the Commission proposed a constitutional provision authorizing the state and municipalities, subject to regulations prescribed by law, to use excess condemnation, that is, to take all the land needed for the attainment of a given public purpose and to dispose of portions thereof, subject to restrictions designed to protect the public purpose. This provision fell along with all others when the proposed 1921 constitution failed in the referendum on calling a constitutional convention.

The existing constitutional provision authorizing excess condemnation was implemented with respect to cities of the first class by a 1935 Act of the General Assembly. The Act related to the acquisition of land for bridges and tunnels and prescribed certain limits under which such land could be acquired.

Interpretation of Provision

A 1957 formal opinion of the Philadelphia City Solicitor defined three theories which are said to justify the use of excess condemnation:

(1) Remnant Theory--Where practically worthless remnants of land are left after a highway has been laid out and widened.
(2) Restrictive or Protective Theory--Where the city acquires adjacent property for the purpose of placing restrictions thereon for aesthetic or safety purposes.
(3) Recoupment Theory Where a broad new thoroughfare is laid out through the heart of congested city districts, entire parcels are taken and the remaining land on either side of the thoroughfare is cut up into suitable parcels and sold to private purchasers, the sums or profits realized going toward the cost of the improvement.[63]

The BMR-PEL Report, previously cited, goes on to state that it may be that the remnant and restrictive-protective theories would ordinarily meet the test of constitutionality, but that, in any event, the most controversial aspect of excess condemnation is the recoupment theory in which the underlying motive is to divert from private real estate owners to public purposes the potential profits from the increased values resulting from public improvements.

It is clear that the existing excess condemnation provision in the Pennsylvania Constitution, Section 5 of Article XV, is a strictly limited one which applies only to cities and only in connection with highways leading to bridges crossing or tunnels under streams which form state boundaries. Moreover, in statutory implementation, the power was extended in 1935 to Philadelphia only. While the principle of excess condemnation has little legal and judicial acceptance in Pennsylvania, it should, nonetheless, be noted that, in connection with urban redevelopment, the Pennsylvania Supreme Court has taken an affirmative view on the right of the government to acquire private property and resell it [see this section, "Alternatives and Proposals," Bureau of Municipal Research—Pennsylvania Economy League (Eastern Division)].

With respect to eminent domain and local governments in the Pennsylvania Constitution, reference should be made to Article I, Section 10, and Article VI, Sections 3 and 8.

Comment

Prior Pennsylvania Commissions.

Two prior Pennsylvania bodies involved with constitutional revision recommended provisions designed to make possible an expanded use of excess condemnation. The 1920 Sproul Commission did not limit either the type of public use under which land could be so acquired, or the type of municipality which could exercise the power to acquire land in this way. The Earle Re-

port of 1935 recommended that the Legislature should have full power to authorize excess condemnation for public purposes.

Two other Pennsylvania Commissions recommended outright repeal of the existing constitutional provision permitting limited use of excess condemnation. The 1959 Woodside Commission Report recommended repeal on the grounds that the excess condemnation device was outmoded and unnecessary in the light of community planning, redevelopment and renewal programs and procedures. The Scranton Commission Report of 1964 also recommended repeal of the provisions.

National Authorities and Organizations.

No provision referring to excess condemnation appear in the model constitutions of either the American Municipal Association, or the National Municipal League.

Other States.

Eight states including Pennsylvania have specific constitutional provisions for excess condemnation powers. A ninth state, Michigan, had a limited provision which was deleted from the state's new Constitution adopted in 1963. In Wisconsin, New York, Ohio, and Pennsylvania, the right to take excess land and property is part of the Article concerning local government corporations. California and Missouri include authorization of excess condemnation as part of the constitution's introductory Bill of Rights. The other states—Rhode Island and Massachusetts—provide for such powers in separate amendments to the constitution.

The provisions relating to excess condemnation in the constitutions of these various states differ significantly with respect to the levels of government authorized to use the power and with respect to the particular land uses included under this power. Six states (California, Massachusetts, New York, Ohio, and Rhode Island) have provisions which authorize the use of excess condemnation by various categories of local and county governments, as well as by the state government. Wisconsin's provision limits the use of the power to the state or any city, and the Pennsylvania provision limits the use to only certain cities located along the boundaries of the state. Five states (Missouri, Ohio, New York, Rhode Island, and Wisconsin) have provisions which authorize use of the power for all or broadly specified types of land uses. New York and Rhode Island also provide for excess condemnation in connection with the redevelopment of slum areas. Massachusetts limits use of the power to the laying-out, widening or relocating of highways. California limits use of the power to land used for memorial grounds, streets, squares, parkways and reservations, and further limits the amount of land to be acquired to parcels wholly or partly within 150 feet of these land uses. Pennsylvania appears to have the most specific and narrow provision--only cities

are authorized to take additional lands and only then for highways or streets connecting with bridges crossing streams, or tunnels under streams forming state boundaries.

Preparatory Committee Hearings and Other.

The Pennsylvania Bar Association has recommended the repeal of Article XV, Section 5. At the public hearings on constitutional revision both the League of Women Voters and A Modern Constitution for Pennsylvania, Inc. basically endorsed the recommendations of the Pennsylvania Bar Association and thereby concurred in the repeal of Article XV, Section 5. The other organizations that testified—Pennsylvania League of Cities; Americans for Democratic Action, Southeastern Pennsylvania chapter; Local Government Conference; Pennsylvania State Association of Township Commissioners; Pennsylvania Home Builders Association—did not in any way mention the subject of excess condemnation.

The Bureau of Municipal Research—Pennsylvania Economy League (Eastern Division) suggests that there is a legitimate public purpose and need for some application of the principle of excess condemnation. In its Report, *Philadelphia and Constitutional Revision*, it presents the following discussion of two serious arguments against the power:

> The first relates to the extent to which the rights of individual property owners are protected from arbitrary and excessive use of the authority; the second, somewhat similar to the first, but going beyond it, relates to the extent to which a city may exercise the function of a real estate agency in assembling properties and selling them at a profit to support a public purpose, rather than leaving such activity to the enterprise and profit of private business.
>
> With respect to the first argument, the point was discussed at considerable length in the debates of the 1920 Constitutional Revision Commission. To this point it was stated by the Honorable George Wharton Pepper:
>
> > '. . . If the taking of property which is to be in part disposed of subject to the restriction for the purpose of forwarding the improvement is under any circumstances a use which can be justified, then it will be a question of fact in any particular case whether that use has been abused or has been pursued according to law. It does not seem to me that we can guard against all possible abuse of the power. The real question is whether there is a power here which can be legitimately invoked at all . . . if something is done in the name of an exercise of eminent domain which is really a cloak for municipal land speculation, that can be corrected by the courts.'
>
> The second argument poses a question of social and political theory for which there is no ready answer in non-partisan governmental research. The leading court decision in Pennsylvania jurisprudence on the subject of excess condemnation holds that the acquiring of excess property for purposes of resale or recoupment is unconstitutional, as a violation of individual property rights. In the case of redevelopment of blighted areas, however, the Supreme Court has taken a contrary position on the right of the government to acquire private property and resell it, in upholding such actions by the Philadelphia Redevelopment Authority (Belovsky v. Redevelopment Authority, 357 Pa. 329, 1948). In so ruling, the Court

was careful to distinguish its position from that taken in respect to excess condemnation. Redevelopment of blighted areas was apparently assumed to have substantial public purpose which would override the constitutional rights of private property owners.[64]

The B.M.R.-P.E.L. does not make any specific recommendation except to state that the question should be resolved in a manner which may establish standards of uniform application throughout the Commonwealth rather than be limited to Philadelphia.

Alternatives and Proposals

Other State Constitutions

Sec. 14½. **Acquisition of land for public improvements; excess condemnation.** The State, or any of its cities or counties, may acquire by gift, purchase or condemnation, lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, squares, parkways and reservations in and about and along and leading to any or all of the same, providing land so acquired shall be limited to parcels lying wholly or in part within a distance not to exceed 150 feet from the closest boundary of such public works or improvements; provided, that when parcels lie only partially within said limit of 150 feet only such portions may be acquired which do not exceed 200 feet from said closest boundary, and after the establishment, laying out, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate so as to protect such public works and improvements and their environs and to preserve the view, appearance, light, air and usefulness of such public works.

The Legislature may, by statute, prescribe procedure.

California, Article I

Powers of Legislature Relative to Excess Takings of Land, for Laying Out, Widening or Relocating Highways.

Article ten of part one of the Constitution is hereby amended by adding to it the following words:—The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: *provided, however*, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

Massachusetts, Amendment Article XXXIX

Sec. 27. **Acquisition of excess property by eminent domain; disposition under restrictions.** That in such manner and under such limitation as may be provided by law, the state, or any county or city may acquire by eminent domain such property, or rights in property, in excess of that actually to be occupied by the public improvement or used in connection therewith, as may be reasonably necessary to effectuate the purposes intended, and may be vested with the fee simple title thereto, or the control of the use thereof, and may sell such excess property with such restrictions as shall be appropriate to preserve the improvements made.

Missouri, Article III

(e) Local governments shall have power to take by eminent domain private property within their boundaries for public use together with excess land or property but no more than is sufficient to provide for appropriate disposition or use of land or property which abuts on that necessary for such public use, and to sell or lease that not devoted to such use. The legislature may authorize and regulate the exercise of the power of eminent domain and excess condemnation by a local government outside its boundaries.

New York, Article IX, Section 1

Sec. 8. **Excess condemnation.** Any agency of the state, or any city, town, village or public corporation, which is empowered by law to take private property by eminent domain for any of the public purposes specified in section one of this article, may be empowered by the legislature to take property necessary for any such purpose but in excess of that required for public use after such purpose shall have been accomplished; and to improve and utilize such excess, wholly or partly for any other public purpose, or to lease or sell such excess with restrictions to preserve and protect such improvement or improvements.

Sec. 9. **Acquisition of property for purposes of article.** Subject to any limitation imposed by the legislature, the state, or any city, town, village or public corporation, may acquire by purchase, gift, eminent domain or otherwise, such property as it may deem ultimately necessary or proper to effectuate the purposes of this article, or any of them, although temporarily not required for such purposes.

New York, Article XVIII

Sec. 10. **Appropriations in excess of public use.** A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they

shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

Ohio, Article XVIII

More Land and Property Than Is Needed for Actual Construction May Be Taken in Fee by the State or any City or Town

Sec. 1. The general assembly may authorize the acquiring or taking in fee by the state, or by any cities or towns, of more land and property than is needed for actual construction in the establishing, laying out, widening, extending or relocating of public highways, streets, places, parks or parkways: *Provided, however*, that the additional land and property so authorized to be acquired or taken shall be no more in extent than would be sufficient to form suitable building sites abutting on such public highway, street, place, park or parkway. After so much of the land and property has been appropriated for such public highway, street, place, park or parkway as is needed therefor, the remainder may be held and improved for any public purpose or purposes, or may be sold or leased for value with or without suitable restrictions, and in case of any such sale or lease, the person or persons from whom such remainder was taken shall have the first right to purchase or lease the same upon such terms as the state or city or town is willing to sell or lease the same.

Rhode Island Amendment, Article XVII

Sec. 3a. **Acquisition of lands by state and subdivisions; sale of excess.** The state or any of its counties, cities, towns or villages may acquire by gift, dedication, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, highways, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, layout, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works. If the governing body of a county, city, town or village elects to accept a gift or dedication of land made on condition that the land be devoted to a special purpose and the condition subsequently becomes impossible or impracticable, such governing body may by resolution or ordinance enacted by a two-thirds vote of its members elect either to grant the land back to the donor or dedicator or his heirs or accept from the donor or dedicator or his heirs a grant relieving the county, city, town or village of the condition; however, if the donor or dedicator or his heirs are unknown or cannot be found, such resolution or ordinance may provide for the commencement of proceedings in the manner and in the courts as the legis-

lature shall designate for the purpose of relieving the county, city, town or village from the condition of the gift or dedication.

Wisconsin, Article XI

National Authorities and Organizations.

Neither the National Municipal League's Model State Constitution nor the American Municipal Association's Model Constitutional Provisions contains any provision on excess condemnation.

Pennsylvania Proposals

Extent of Land Permitted to be Taken for Public Improvements.

Section 23. When the public purpose for which land is taken can best be attained by acquiring more land than the state government or the municipality proposes to retain, the state government or the municipality, subject to regulations prescribed by law, may take all the land which in its judgment is needed for the attainment of such purpose and may dispose of portions thereof, subject to restrictions protective of the public purpose.

Sproul Commission (1920)

Article IX
SECTIONS ON LOCAL GOVERNMENT DEBT

(Sections 7, 8, 9, 10, 15, 19)

Introductory Note

A municipality has no inherent power to borrow. Such power must be conferred by statute, charter or constitution.

In Pennsylvania a municipality looks to the Legislature for its borrowing power. The power of the Legislature to authorize municipal borrowing is, however, restricted by several limitations imposed by the Constitution.

The most significant of these is a provision limiting municipal debt to 15 percent of the assessed valuation of a municipality's taxable property, 5 percent of which may be incurred solely upon the authority of the governing body and the remaining 10 percent of which may be incurred only after voter approval. Exclusions from this limitation are provided, however, by other constitutional provisions excepting debt incurred to finance certain self-sustaining projects from these limitations and establishing different debt limits for Philadelphia.

Other restrictions imposed by the Constitution include the requirement that a municipality incurring indebtedness provide for repayment within a specified time period through the collection of an annual tax and prohibitions

against authorizing a municipality to invest, appropriate funds to, or lend its credit to a private body, and against Commonwealth assumption of the debt of a city, county, borough, or township.

The problem facing the Convention in the area of municipal debt is the desirability of altering any of these restrictions. There have been several proposals favoring the easing or abolishing of certain of these restrictions in order to give the Legislature more control over municipal borrowing.

Article IX
SECTION 7—MUNICIPALITIES NOT TO BECOME STOCKHOLDERS

Present Provision

> The General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

Historical Note

This Section has its origin in an 1857 amendment to the Constitution of 1838. Prior to 1857 it was not unusual for the Legislature to pass acts permitting particular municipalities to subscribe to the stock of quasi-public corporations. The most provocative investments had been local investments in railroad stock.

Interpretation of Provision

The Pennsylvania appellate courts have ruled that Section 7 was not enacted to and does not prevent any municipality from entering into any arrangement to carry out a proper governmental purpose. Thus they have permitted the Legislature to authorize payments to be made to other public corporations, such as municipal authorities, and to other bodies, including private bodies, for the purpose of carrying out a proper governmental function.[5]

Comment

Prior Pennsylvania Commissions.

The Woodside Commission (1959) recommended no change in the present provision. The Scranton Commission (1964) recommended that Section 7 be altered to direct the prohibitions against the municipalities rather than the Legislature and to expand the Section's coverage to all classes of political subdivisions.

National Authorities and Organizations.

Neither the National Municipal League's Model State Constitution nor the American Municipal Association's Model Constitutional Provisions contains any provision dealing with municipal debt. Silence on this subject implies that the state legislature has authority to deal with the matter by general law.

Other States.

Provisions restricting or prohibiting municipalities from investing in or making loans to private corporations are contained in approximately one-half of the State constitutions.

Preparatory Committee Hearings and Other.

The Pennsylvania Bar Association addressed itself to Section 7; its recommendation parallels that of the Scranton Commission, that is, that Section 7 be changed to direct the prohibitions against the municipalities rather than the Legislature, and to extend the prohibitions to all political subdivisions.

The Pennsylvania League of Cities testified that Section 7 has presented a problem to cities that act to assist public service enterprises whose activities are vital to the public welfare, and that it has resulted in forcing cities to use indirect means (the purchasing and leasing of equipment) to aid such community services as transportation. The League, therefore, recommended that the Convention consider the removal of this restriction on municipal financial aid to public service enterprises by adding to Section 7 a provision authorizing the General Assembly to provide standards whereby municipalities may give financial assistance to public service enterprises in the interest of public health, safety and welfare.

Alternatives and Proposals

Other State Constitutions

Sec. 7. **Gift or loan of credit; subsidies; stock ownership; joint ownership.** Neither the State nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State or operation or provision of law.

Arizona, Article IX

Sec. 179. **Political subdivision not to become stockholder in corporation or appropriate money or lend credit to any person, except for roads or state capitol.** The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided. If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer.

Kentucky, Section 179

Sec. 9. **Limitations on powers of county or city to assist corporations.** No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, shall become a stockholder in any joint company, corporation or association, whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association. Provided, that any municipal corporation designated as a port under any general or special law of the state of Oregon, may be empowered by statute to raise money and expend the same in the form of a bonus to aid in establishing water transportation lines between such port and any other domestic or foreign port or ports, and to aid in establishing water transportation lines on the interior rivers of this state, or on the rivers between Washington and Oregon, or on the rivers of Washington and Idaho reached by navigation from Oregon's rivers.

Oregon, Article XI (excerpts)

National Authorities and Organizations. No suggested provisions.

Pennsylvania Proposals

Municipalities Not to Pledge Credit. Section 20. A municipality shall not pledge or lend its credit to a corporation, association or individual and shall not be a stockholder or owner in a corporation or association. Except to discharge municipal liabilities, it shall not appropriate money to assist a private business enterprise.

The provisions of this section shall not be construed to apply to the lease by a municipality to a corporation of a public service facility for a rental dependent on the earnings of the lessee if the corporation covenants to operate the facility and an agency created by law to regulate public utilities approves the lease.

Sproul Commission (1920)

No change in present provision.

Woodside Commission (1959)

C. Municipal Finance Section 6--**Municipalities Not to Become Stockholders in Corporations**

[The General Assembly shall not authorize any] *No* county, city, borough, incorporated [district] town, township, *school district or other political subdivision shall* [to] *become* a stockholder in any company, association or corporation or obtain or appropriate money for or loan its credit to any corporation, association, institution or individual.

Scranton Commission (1964)

C. Municipal Finance Section 6. **Municipalities Not to Become Stockholders in Corporations.**—[The General Assembly shall not authorize any] *No* county, city, borough, [township or incorporated district to] *incorporated town, township, school district or other political subdivision shall* become a stockholder in any company, association or corporation or [to] obtain or appropriate money for, or [to] loan its credit to, any corporation, association, institution or individual.

Pennsylvania Bar Association

Addition to Section 7:

However, the General Assembly may provide by general legislation standards by which municipalities may give financial assistance to public service enterprises in the interest of the public health, safety and welfare.

Pennsylvania League of Cities

Article IX
SECTIONS 8, 15, 19—MUNICIPAL DEBT

Present Provisions

Section 8. Municipal Debt

The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed fifteen (15) per centum upon the assessed value of the taxable property therein nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five (5) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. The debt of the city of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half (13½) per centum of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three (3) per centum upon such average

assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law. No debt shall be incurred by, or on behalf of, the county of Philadelphia.

In ascertaining the debt-incurring capacity of the city of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase, or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by the General Assembly.

In incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking fund charges as required by section ten of this article until the expiration of said period of one year after the completion of said work.

Section 15. Exceptions to Municipal Indebtedness; Liquidation

No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the Constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or, where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or

if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability. Where municipalities or counties shall issue obligations to provide for the construction of property, as herein provided, said municipalities or counties may also issue obligations to provide for the interest and sinking-fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipalities and counties shall not be required to levy a tax to pay said interest and sinking-fund charges, as required by section ten of article nine of the Constitution of Pennsylvania, until after said properties shall have been operated by said counties or municipalities during said period of one year. Any of the said municipalities or counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valuation of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as shall as provided by law.

Section 19. Special Assessment for Transit Facilities in Philadelphia

The city of Philadelphia, in constructing, for the benefit of the inhabitants thereof, transit subways, rapdi transit railways, or other local transit facilities for the transportation of persons or property, shall have the power, in order the more justly to distribute the benefits and costs of such transit facilities, to levy special assessments against such properties, whether abutting or not abutting upon said transit facilities, as are or will be specially and particularly benefited by the construction or operation of such transit facilities; such power to be exercised in accordance with existing or with future laws or pursuant to statutes enacted prior to the adoption of this amendment but made effective by it. Such special assessments, when so levied, may be made payable presently when levied or in installments over a period of years, with or without interest, and shall immediately, when so levied, be deducted from any indebtedness incurred for such purposes in calculating the debt of such city. Such city may acquire by eminent domain either the fee or less estate or easements in land necessary for the construction or operation of such transit facilities or for the disposal of earth or material excavated in the construction thereof or for other incidental purposes; but this provision shall not create any additional powers for the condemnation of any railroad or street railway in operation.

Historical Note

While the 1838 Constitution was amended in 1857 to place limitations upon State borrowing, restrictions on municipal borrowing were not added to the Constitution until 1874.

They reflected reaction to rapidly mounting debt during a period of rapid population growth for Pennsylvania cities. The population of the State in-

creased by 21 percent during the decade preceding the meeting of the convention. The most marked growth was in the developing industrial centers and in the anthracite coal and petroleum regions. Pittsburgh, Allegheny, Scranton, Wilkes-Barre and Williamsport more than doubled in size. This growth was paralleled by mounting municipal debt as growing cities struggled with public works projects to meet new needs. In some areas the debt picture was rendered more complex by subscription to railroad stocks by communities which vied with one another for access to markets for their products.

As originally adopted in 1874, Section 8 required every county, city, borough, township, school district or other municipality or incorporated district to obtain voter approval to incur debt beyond two percent of the assessed valuation of taxable property and prohibited municipal debt beyond seven percent of the assessed valuation of taxable property,[66] except that any city whose debt in 1874 exceeded seven percent of such assessed valuation could increase its debt three percent. Between 1911 and 1951 there were five amendments to Section 8, all for the purpose of liberalizing the debt restrictions for Philadelphia. In addition, the borrowing capacity of other municipalities was expanded by Section 15, which was added to the Constitution in 1913 and permits additional borrowing by counties, boroughs and cities for the construction or acquisition of self-sustaining waterworks, subways, underground railways and street railways, and by the 1966 amendment to Section 8 which permits all municipalities (other than Philadelphia) to borrow up to five percent of assessed valuation without voter approval and up to 15 percent with voter approval.

Section 8 establishes different debt limits for the City of Philadelphia. These limits, which gave Philadelphia greater borrowing power than other municipalities until the 1966 amendment to Section 8, permit borrowing of up to three percent of the average of the annual assessed valuation for the previous ten years on the authority of the governing body and of up to 13½ percent upon voter approval.

In addition, Section 19 of Article IX was added to the Constitution in 1933; it excludes from Section 8's coverage borrowing by Philadelphia to finance the construction of transit facilities to the extent that Philadelphia has levied special assessments to finance the borrowing.

Interpretation of Provision

None of the above provisions of the Constitution confers upon a municipality the authority to borrow funds; they operate only in a negative manner to prohibit indebtedness beyond certain limits. Authority to borrow up to the Constitutional limit must come from the Legislature.

Prior to the 1966 amendment to Section 8, all municipalities, other than school districts of the first class and first class A, had received statutory authorization to borrow up to their Constitutional limits. Following the 1966

amendment, the Legislature expanded the borrowing authority only for school districts of the second, third and fourth classes, which are permitted to borrow up to the new Constitutional limits, and for school districts of the first class and first class A, which are now permitted to borrow up to their prior limit of 5 percent of assessed valuation without voter approval.[67]

As this action by the Legislature would indicate, the amendment to Section 8 easing the municipal borrowing restrictions was primarily for the benefit of the school districts. It was shown in a 1958 study by the Pennsylvania Economy League which analyzed the outstanding indebtedness (both guaranteed and non-guaranteed) of a sample of the subdivisions in Pennsylvania that the total debt of the counties, county institution districts, boroughs, and townships had remained well within Section 8's debt limitations but that the total debt of many school districts was far in excess of these limitations.[68]

While the debt limitation provisions, according to the Pennsylvania Supreme Court, were designed to prevent municipalities from loading the future with obligations to pay for things the present desires but cannot justly afford; and in short to establish the principle that beyond the defined limits they must pay as they go, they do not, in fact, prevent municipal borrowing in excess of the Constitutional limits to finance capital improvements.[69] Municipalities, in the same manner as the Commonwealth, may use authority financing to circumvent the debt restrictions imposed by the Constitution.[70] The Pennsylvania Courts have ruled as set forth below, that such financing is not within the coverage of Section 8's borrowing restrictions.

The first Municipal Authorities Act was passed in 1935. Little use was made of authority financing, however, until a broader act was passed in 1945 which permitted the construction and leasing of school buildings. School districts were granted power to create their own authorities in 1951.

The Legislature has placed no limitations upon the amount of funds a municipality may borrow through authority financing and no voter approval is necessary for any such borrowing. The only limitation on a municipality is that the project must be of a type designated in the Municipal Authorities Act, which covers most projects in which a municipality would have any interest.

The authority device was used in many instances to evade Section 8's requirement of voter approval rather than to circumvent its debt limitation provisions. It would be expected that the 1966 Constitutional amendment increasing the debt limits for municipalities (other than Philadelphia) to 15 percent of assessed valuation and the limits for borrowing without voter approval from two to five percent will result in more direct financing and less authority financing because it will no longer be necessary for certain municipalities to use authority financing to circumvent the debt limitation and electoral approval requirements of section 8.

The issues which the Pennsylvania Appellate Courts have faced in construing Section 8, include (1) what is the effect of a municipality's incurring indebtedness beyond the limits permitted by this Section; (2) what constitutes debt under this Section; (3) what is the meaning of the term "assessed valuation" as used by this Section.

In the decisions involving the first issue the courts have given force to the debt limitation provisions by ruling that a municipality lacks the power to create debt in violation of the Constitution. Hence contracts and bonds attempting to increase municipal debt in violation of Section 8 are void.[71] Exceptions to this rule are made, however, for contracts entered into in good faith and with reasonable expectation that funds will be available to meet the obligations created under the contract.[72]

In the decisions involving the second issue, the courts have said that the term "debt," as used in Section 8, is used not in any technical way, but rather in its broad general meaning, and hence includes all contractual obligations payable in the future for considerations received in the present.[73] The term is construed as meaning net debt, and not gross debt, but the courts include as net debt not only issued bonds but also authorized but unissued bonds.[74]

Although the courts have said that the term "debt" is used in its broad general meaning, it has excluded from the coverage of the term certain types of municipal indebtedness. The most significant exclusion is the municipal authority bond and the long-term lease between the authority and the municipality, neither of which is considered debt under Section 8.[75] A second exclusion created by a 1959 Supreme Court case is direct municipal borrowing to finance the purchase, construction or improvement of a self-liquidating project, provided that no municipal property, including the project financed by the borrowing, and no municipal revenues other than the revenues derived directly from the project are pledged to secure the indebtedness.[76] A third exclusion is short-term borrowing and contracts payable out of current revenues.[77]

In the decisions involving the third issue the courts have construed the term "assessed valuation," as used in the provisions of Sections 8 and 15 limiting debt to certain percentages of assessed valuation, as the value at which property is assessed for purposes of taxation and not the fair market value of the property. This construction of the term "assessed valuation" imposes significantly greater limitations on the borrowing power of municipalities because in Pennsylvania the assessed value of property is frequently less than 50 percent of fair market value.

The most recent decision construing "assessed valuation" in this manner struck down as unconstitutional the portion of a statute enacted by the General Assembly which attempted to increase the borrowing limits of municipalities by, inter alia, authorizing municipalities to borrow up to maximum

percentages of assessed valuation then permitted by the Constitution, and by defining assessed valuation as the fair market value as determined by the State Tax Equalization Board.[78]

The Pennsylvania appellate courts have ruled that municipal indebtedness is excluded by Section 15 from the debt limitation provision of Section 8 only if (a) the funds are used for the construction and acquisition, and not the improvement, of a project; (b) the funds are used for waterworks, subway, underground railway or street railway projects; and (c) the project has either been self-sustaining for five years or the indebtedness is secured solely by liens on the project property and is not backed by the general credit of the municipality.[79]

The coverage of Section 15 is further limited by a series of cases construing the term "municipality," as used in the provisions of Section 15, in the narrow technical sense as including only cities and boroughs and not school districts, townships and other incorporated districts.[80]

Comment

Because of the importance and complexity of constitutional treatment of municipal debt, this section discusses the major elements involved in debt regulation and relates treatment in other states, and the proposals of prior Pennsylvania commissions, national authorities, and Pennsylvania organizations to the particular approach they follow or recommend.

In general, there are two categories into which states can be divided concerning the regulation of municipal debt:

(1) States whose constitutions specify percentage debt limitations based on property value. Thirty-five states, including Pennsylvania, fall into this category. In six of these states, however, the limitations apply only to a single type of government or to debt for a particular purpose and in about half of these states exceptions are made for debt incurred to finance self-sustaining projects.

(2) States which impose only statutory limitations on the borrowing power of local governments. The remaining 15 states fall into this category; no state constitutions delegate unlimited borrowing authority to the local governments. Such statutory limitations are also imposed in states falling into the first category.

The question of the effect of the state constitutional restrictions on municipal borrowing was examined in a 1961 study by the Advisory Commission on Intergovernmental Relations. This study concluded that municipal debt was somewhat lower in states having debt restrictions in their constitutions. Furthermore, the study found that there were only half as many defaults by municipalities in the depression of the 1930's, when constitutional restrictions were in use in most states, as in the depression of the 1870's when municipal borrowing was less restricted by state constitutions.[81] In

the 1930's there were, however, other factors at work such as greater expertise by the issuers and borrowers of the bonds.

Constitutional Choices in Treatment of Local Government Debt

In effect, there are three basic alternatives available in constitutional treatment of local government debt: (1) the removal of all restrictions on municipal borrowing; (2) the delegation to the Legislature of the task of establishing debt restrictions; or (3) the continuation of the inclusion of debt restrictions in the Constitution.

1. No Restrictions

The removal of all restrictions on municipal borrowing could be accomplished by inserting a provision in the Constitution giving municipalities absolute power to incur indebtedness and prohibiting the Legislature from establishing any restrictions on this power. The arguments in favor of such a provision are: (1) that debt restrictions have not been very successful in the past—they have either been too high to be effective, or when they have been low enough to have an effect, they have delayed the construction of necessary improvements until the Constitution could be amended; (2) that for more than two decades, municipalities, through the device of authority financing, have had almost unrestricted power to finance capital improvements through borrowing and have responsibly exercised this power; (3) that reporting by news media, pressure from interested groups and the necessity to find buyers for bonds operate as a sufficient check to prevent irresponsible financing; and (4) that debt limitations are too inflexible—a local government must be able to respond to changing conditions and needs.

The arguments against the abolishment of all municipal debt restrictions are that (1) each Pennsylvanian lives under the jurisdiction of at least three types of political subdivisions (county, municipality, and school district) which are governed by separate governing bodies that act independently of one another—consequently without any debt limitations any of the governing bodies might monopolize the practical borrowing capacity, or the total debt burden on an individual parcel of property or person could become intolerable; (2) that debt restrictions have in the past operated to protect municipalities' credit ratings by restricting their borrowing and assuring bond purchasers of their ability to pay; (3) that many municipalities need facilities which they cannot afford, and without debt restrictions, municipal officials would be too vulnerable to the public's demands for such facilities; and (4) that, if based upon proper factors, debt restrictions will reflect the ability of a municipality to pay its indebtedness.

2. Limits Set by the Legislature

This could be accomplished by repealing the Sections of the Constitution which restrict municipal borrowing and adding a provision to the Constitution

authorizing the Legislature to establish borrowing restrictions for municipalities. Such a proposal was made at the public hearings before the Committee on Taxation and Finance by the Pennsylvania Local Government Conference and the League of Cities, both of which recommended adoption of the following proposal of the Advisory Commission on Intergovernmental Relation:

> The Legislature may pass laws regulating the taxing and borrowing powers of political subdivisions of the Commonwealth.

For those who believe that some municipal debt restrictions are useful, arguments in favor of leaving strictly to the Legislature the duty of establishing the restrictions are (1) that legislative control is more flexible; (2) that the Legislature is more responsive to the public need; and (3) that the Legislature is in a better position to fix and alter limits that will meet the changing and varying borrowing needs of all subdivisions. The arguments against leaving this matter strictly to the Legislature are (1) that the Legislature might be unwilling to oppose any programs desired by the municipalities and thus provide no real protection against unwise increases in the borrowing capacity; (2) that the Legislature might establish debt limits in response to pressures from the various subdivisions and not as a result of a careful consideration of the subdivisions' need to borrow and ability to pay; and (3) that few members of the Legislature other than those from the subdivisions involved would have sufficient knowledge to make an intelligent decision on such matters.

The legislative route to municipal debt regulation was recommended at the Preparatory Committee's public hearings by the Southeastern Chapter of Americans for Democratic Action. That organization proposed that no limits on municipal debt be constitutionally provided on the grounds (1) that concepts as to the amount of debt which is reasonable change from time to time and the necessity of constitutional amendment leads to "extraneous considerations becoming involved"; (2) that a limitation tied to real estate valuation is based on the erroneous assumption that there is state-wide uniformity in assessments as a percentage of market value; and (3) that real estate valuations alone are not a valid measure of a community's ability to finance its future. It recommended, therefore, that the constitution merely provide that municipal governments be limited by the State Legislature with regard to the maximum amounts of debt which they can borrow without voter approval and with voter approval, and that municipal borrowing be "for a public purpose," be limited in duration to the useful life of the project, and be repaid on a uniform basis over the life of the improvement.

3. Constitutional Limits

The continuation of Constitutional restrictions on municipal borrowing is favored by those persons who believe that some restrictions on municipal borrowing are necessary and that the Legislature will not provide sufficient

protection against unwise municipal borrowing. Persons espousing this view recognize that some municipal borrowing for capital improvements is necessary and useful and do not seek to prohibit all borrowing. Rather, their aim is the imposition of reasonable restrictions which will prevent excessive borrowing without also preventing borrowing which is necessary and can be repaid.

One such restriction frequently used is the restriction establishing one limit beyond which borrowing must be approved by the electorate and another limit beyond which all borrowing is prohibited. Pennsylvania's requirement of voter approval for municipal borrowing beyond 5% of assessed valuation of the taxable property and its prohibition of borrowing beyond 15% of assessed valuation is an example of such a restriction.

A less rigid restriction, proposed by the Woodside Commission (1959) and the Scranton Commission (1964), requires voter approval for municipal borrowing beyond a certain percentage of the value of a municipality's taxable real estate but places no limits upon borrowing approved by the electorate.

Under both these restrictions the Legislature still has the power to impose additional restrictions and limitations upon the amount of debt that may be created, either with or without voter approval. The difference between the restrictions is that under the first restriction the Legislature may authorize only a limited amount of municipal borrowing, while under the second restriction the Legislature is vested with the power to authorize the creation of any amount of municipal debt on approval by the electorate.

In choosing between these two restrictions, the arguments in favor of the first, which prohibits all borrowing beyond a certain percentage of the value of a municipality's taxable real estate, are that such a restriction is necessary to prevent excessive municipal borrowing, that the Legislature cannot be trusted to impose sufficient restrictions, and that leaving this matter to the electorate of a municipality is not an adequate safeguard.

The argument in favor of the second restriction, which imposes no limitations on borrowing approved by the voters, is that the power of the Legislature to restrict borrowing together with the requirement of voter approval of borrowing beyond a certain amount provides sufficient safeguards. The requirement of voter approval is meaningful because voters are well aware that municipal borrowing may result in increased taxes and, consequently, carefully consider the matter. Furthermore, the arbitrary prohibition of all borrowing beyond a specified limit can prevent the construction of necessary improvements. The needs and circumstances of the various municipalities differ enormously, so no single limit will operate fairly for all municipalities.

Several other matters must be considered in connection with the adoption of either of the above restrictions. It must be decided which debt limitation base should be used; whether uniform or varying limitations should be imposed on the various types of subdivisions; and whether any types of borrowing should be excluded from the borrowing restrictions. These matters are

relevant in connection with the adoption of either of the above restrictions because they must be considered in establishing the limits within which borrowing is permitted without voter approval as well as in establishing the limits beyond which all borrowing is prohibited.

(a) Debt Limitation Base

In all states, municipal borrowing limitations are expressed as a percentage of the assessed or fair market value of taxable property within the municipality. Most states, including Pennsylvania, use assessed valuation but the trend is toward the use of fair market value.[82] The advantage of using the fair market value standard is that the same standard applies to all municipalities. This is not generally true with the use of the assessed valuation standard, because the various political subdivisions assess property at different percentages of fair market value. The Woodside Commission recommended the use of the fair market value standard, but the Pennsylvania Bar Association and the Scranton Commission (1964), on the other hand, recommended the continued use of the assessed valuation standard.

Basing debt limitations either on the assessed or fair market value of the taxable real property of a municipality has been criticized because the real estate tax is no longer the municipality's sole source of revenue. Significant amounts of revenue today are derived from non-property taxes, such as the income, wage, per capita, mercantile, deed transfer and amusement taxes, and Federal and State aid.[83] State aid is particularly important in the financing of school districts, many of which receive more than half their revenue from the state subsidy. Thus the critics contend that the basis of the debt limitation should be expanded to reflect the community's total ability to finance debt. The basis frequently proposed by these critics is the fixing of the debt limit as a percentage of total revenue, predicted either on the revenue of the preceding year or on the average revenue over a number of years.

Opponents of such a proposal argue that the revenue from property taxation is likely to remain relatively stable. State subsidies, on the other hand, may be discontinued or at least sharply curtailed by the Legislature and most nonproperty taxes may fluctuate unduly in yield because of economic conditions and may be prohibited or preempted by the State. Hence it is a mistake for a municipality to rely on such revenues being available over a long period of time.

(b) *Uniform or Varying Restrictions*

Alternatives which may be used in establishing restrictions for municipal debt include the imposition of uniform limits on all classes of subdivisions; the imposition of limits which vary by types of subdivisions; and the imposition of a total or overlapping limit for all subdivision borrowing, with the limits for the individual types of subdivisions, the sum of which may not exceed the total limit, to be established by the Legislature.

The first alternate—the imposition of uniform limits—is presently used by Pennsylvania, and the recommendations of the Woodside Commission (1959), the Scranton Commission (1964), and the Pennsylvania Bar Association propose the continued imposition of uniform restrictions on all types of subdivisions.[84] This use of this alternative has been criticized by the Pennsylvania Economy League on the grounds that:

> Uniform limits cannot take into account the fact that present indebtedness is not comparable among classes of subdivisions and that future requirements are unlikely to be similar. In order for a uniform limit to be adequate for that class of subdivision most likely to need increased borrowing capacity, the limit would be grossly excessive for the remainder. A limit suited for school districts would be at least quadruple the apparent needs of counties and institution districts.[85]

The second alternative—the imposition of limits which vary by types of subdivisions—is used by most states whose constitutions impose municipal borrowing restrictions. The advantages of this alternative are that debt limitation provisions, to be effective, should relate to current and probable borrowing needs. Therefore, since the borrowing needs of different types of subdivisions vary widely, the limits should likewise vary.

The advantages of the third alternative—the imposition of a ceiling with legislative establishment of municipal limits within the ceiling by class—are that, while protecting the taxpayer from an excessive overlapping burden of local debt by placing a ceiling on the Legislature's authority to authorize borrowing, it offers flexibility by permitting the Legislature to apportion all or part of the total debt limit among the types of subdivisions in accordance with their present needs and conditions. The disadvantage is that the Legislature might establish the limits for the types of subdivisions as a result of pressures exerted on the Legislature rather than as a result of Legislative determination of the needs of the various types of subdivisions.

(c) *Exclusions*

Several states, including Pennsylvania, exclude from the coverage of the municipal debt restriction sections of the Constitution certain indebtedness incurred to finance self-sustaining facilities. The justification for this exclusion is that since such indebtedness will not be repaid out of the general revenues of the municipality, it should not be included within the coverage of the debt limitation provisions, the purpose of which is to limit municipal borrowing to an amount that a municipality can reasonably be expected to repay out of its general revenues.

The revisory Commissions all recommended that this exclusion be continued and expanded. The Woodside Commission (1959) would repeal those provisions of Sections 8 and 15 which exclude from the coverage of Section 8's debt restriction provisions borrowing for certain self-sustaining projects and in their place add to the municipal debt restriction section a provision excluding from coverage all obligations payable solely from the net revenues

from designated projects.[86] The Bar Association and the Scranton Commission (1964) proposals differed only by adding to this exclusion from the municipal debt restriction, obligations incurred for the acquisition of public works and public utilities reasonably expected to be revenue producing.

The other major exclusion from Section 8's debt limitation provisions is indebtedness incurred through the authority mechanism. The argument against the authority financing exclusion is that, if municipal debt limitations are desirable, there should be no exception which permits the complete evasion of the limitations. If such limitations are not desirable, they should be abolished completely so that a municipality is able to choose freely between direct borrowing and borrowing through the authority mechanism. Under the present situation a municipality which has exhausted its borrowing capacity or must obtain voter approval to borrow funds has no such choice. It will use the authority device to avoid Section 8's restrictions even though it might prefer to borrow directly in order to keep more control over the operation of the project and in order to borrow funds at a lower interest rate.[87]

Both the Woodside Commission (1959) and the Scranton Commission (1964) proposed that the section restricting municipal borrowing contain a provision bringing authority obligations, the repayment of which will be made either directly or indirectly from the general revenues of a municipality, within the section's coverage. The Pennsylvania Bar Association, on the other hand, would continue to permit such obligations to be excluded from the section's coverage.

The argument in support of the Pennsylvania Bar Association's proposal, which would preserve the status quo by imposing municipal borrowing restrictions and excluding authority financing from these restrictions, is that the construction and operation of a project by an authority rather than a municipality is more efficient; therefore, authority financing should be encouraged. There are several reasons for the greater efficiency of authorities according to supporters of such financing. One is that the management of an authority can direct all of its attention and energies to the particular projects or purposes of the authority while municipal officials must be concerned with a wide range of problems. Another is that authorities have been able to attract as members talented persons in the community who are willing to give valuable service for little or no compensation. A third is that authorities, being one step removed from municipal government and the related political activity, are better able to establish hiring policies based on merit rather than patronage.

The Pennsylvania Municipal Authorities Association, in its testimony before the Preparatory Committee, in stating its general position that the Constitution should be written in such a manner as to "make available to the citizens a free choice as to the method of creation, operation, and financing of their addition of proprietary functions," proposed the retention of the 15 per-

cent and 5 percent limitations, but the addition of a new subsection that would make clear that municipalities have the right to issue non-debt revenue bonds. This would permit municipalities to exercise their own judgment and choice with respect to the authority method or other means of financing and operating a particular project.

The other exception to Section 8's debt limitation provisions is Section 19 of Article IX which excludes from the coverage of Section 8 borrowing by Philadelphia to finance the construction of transit facilities to the extent that Philadelphia has levied special assessments to pay for these facilities. The Woodside Commission (1959) recommended no change in Section 19. The Pennsylvania Bar Association and the Scranton Commission (1964), on the other hand, recommended the repeal of this section because the powers granted therein have never been exercised in the more than 30 years since the section was added to the Constitution.

Alternatives and Proposals

Other State Constitutions

Sec. 12. **Limitation of municipal indebtedness; debt retirement.** No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest of such debt, as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this Constitution in pursuance of any law providing therefor.

Illinois, Article IX

Sec. 26(a). **Limitation on indebtedness of local governments without popular vote.** No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution.

Sec. 26(b). **Limitation on indebtedness of local government authorized by popular vote.** Any county, city, incorporated town or village or other political corporation or subdivision of the state, by vote of two-thirds of the

qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per cent of the value of taxable tangible property therein as shown by the last completed assessment for state or county purposes, except that a school district by a vote of two-thirds of the qualified electors voting thereon may become indebted in an amount not to exceed ten per cent of the value of such taxable tangible property.

Sec. 26(c). **Additional indebtedness of counties and cities when authorized by popular vote.** Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five per cent of the taxable tangible property shown as provided in section 26(b).

Sec. 26(d). **Additional indebtedness of cities for public improvements; benefit districts; special assessments.** Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted not exceeding in the aggregate an additional ten per cent of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of acquiring rights of way, constructing, extending and improving the streets and avenues and acquiring rights of way, constructing, extending and improving sanitary or storm sewer systems. The governing body of the city may provide that any portion or all of the cost of any such improvement be levied and assessed by the governing body on property benefited by such improvement, and the city shall collect any special assessments so levied and shall use the same to reimburse the city for the amount paid or to be paid by it on the bonds of the city issued for such improvement.

Sec. 26(e). **Additional indebtedness of cities for municipally-owned water and light plants; limitations.** Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness in an amount not to exceed an additional ten per cent of the value of the taxable tangible property shown as provided in section 26(b), for the purpose of paying all or any part of the cost of purchasing or constructing waterworks, electric or other light plants to be owned exclusively by the city, provided the total general obligation indebtedness of the city shall not exceed twenty per cent of the assessed valuation.

Missouri, Article VI

Sec. 12. **Further limitations on contracting local indebtedness authorized.** It shall be the duty of the legislature, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of counties, cities, towns and villages, so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. Nothing in this article shall be construed to prevent the legislature from further restricting the powers herein specified of any county, city, town, village or school district to contract indebtedness or to levy taxes on real estate. The legislature shall not, however, restrict the

power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted.

New York, Article VIII
Amendment, 1963

Sec. 130. **Organization and powers.** The legislative assembly shall provide by general law for the organization of municipal corporations restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

North Dakota, Article VI

Sec. 13. **Laws to limit powers of municipalities.** Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Ohio, Article XVIII

National Authorities and Organizations

Section 1. The Legislature may pass laws regulating the taxing and borrowing powers of the [local governments] [political subdivisions] of the state.

Section 2. [All parts of the Constitution in conflict with this amendment are hereby repealed.] [Sections (identify those sections of Constitution to be repealed) are hereby repealed.]

Section 3. [Insert appropriate language, consistent with the referendum requirements for amending the Constitution and with state election laws, for submission of the proposed amendment to the electorate.]

Advisory Commission in Inter-governmental Relations

Pennsylvania Proposals

Municipal Borrowing Capacity. Section 17. A municipality may incur debt by borrowing money as prescribed by law if its aggregate debt for borrowed money would not then exceed the sum of:

(a) Ten per centum of the assessed value of the property therein taxable by or for the benefit of the municipality.

(b) An amount equal to that capital sum which, at the legal rate of interest and at such amortization charges as shall be prescribed by law would yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements.

(c) The amount of debt secured by liens on public improvements and im-

posing no obligation on the municipality, if the net revenue derived from such improvements has not been taken into account under paragraph (b).

(d) So much of any debt incurred within five years to acquire public improvements as shall be likely to be allowable under paragraph (b) within six years thereafter, if the net revenue derived from such improvements has not been taken into account under paragraph (b), and if such debt has not been taken into account under paragraph (c).

(e) The par value of the evidences of debt of the municipality owned by it and pledged toward the payment of the principle of its debt.

(f) The amount of cash and the market value of investments owned by the municipality and the amount of the collectible debts due or to fall due owned by the municipality, insofar as such assets are pledged toward the payment of the principal of its debt.

(g) Eighty per centum of the amount which it is estimated, as prescribed by law, that the municipality will receive within five years from assessments against property benefited by public improvements if such amount is pledged toward the payment of the principal of its debt and if it has not been taken into account under paragraph (f).

An indebtedness incurred by a municipality in excess of three per centum of the assessed value of the taxable property therein shall be approved by a majority of the electors thereof at a public election held as prescribed by law.

The term "incur debt," as used in this section, shall include an incurrence of new indebtedness, an extension of the maturity of a debt, a deferment of the payment of a debt, a change in the form of a debt, and an assumption of a debt.

A debt shall be deemed to be incurred at the time the obligation to pay is entered into or the contract to extend, defer, change or assume an existing debt is made.

Sproul Commission (1920)

(a) No debt shall be incurred or increased by or on behalf of any county, city, borough, incorporated town, township, school district or other political subdivision to an amount exceeding in the aggregate at any one time two per cent of market value of the taxable property in the political subdivision, without the affirmative vote of a majority of the qualified electors of the political subdivision voting theron at a public election. Except as herein provided, no debt or other obligation shall hereafter be created by or on behalf of any county, city, borough, incorporated town, township, school district or other political subdivision, the repayment of which will be made either directly or indirectly from general revenues of the political subdivision, whether by direct payment or through leases or other contractual obligations.

(b) The General Assembly may impose additional restrictions and limitations, uniform on each type or class of political subdivision, on the amount of debt that may be created either with or without the consent of the elec-

tors, and may prescribe the manner in which any debt may be created. The General Assembly may provide for the apportionment among political subdivisions of borrowing power within general limitations.

(c) Obligations payable solely from the net operating revenues from designated projects are not debt within the meaning of this section.

Woodside Commission (1959)

GC*Section 7—**Municipal Debt** (a) No debt shall be incurred or increased by or on behalf of any county, city, borough, incorporated town, township, school district or other political subdivision to an amount exceeding in the aggregate, at any one time, two per cent of the assessed value of the taxable property in the political subdivision without the affirmative vote of a majority of the qualified electors of the political subdivision voting thereon at a public election.

(b) Obligations, the repayment of which will be made either directly or indirectly from general revenues of a political subdivision, whether by direct payment or through leases or other contractual obligations, are debt of the political subdivision within the meaning of this Section. Obligations payable solely from the net operating revenues from designated projects are not debt within the meaning of this Section, nor are obligations incurred for the acquisition of revenue producing public works or public utilities which may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon.

(c) The General Assembly may impose additional restrictions and limitations uniform on each type of class of political subdivision on the amount of debt that may be created, either with or without the consent of the electors and may prescribe the manner in which any debt may be created. The General Assembly may provide for the apportionment among political subdivisions of borrowing power within general limitations.

(d) In ascertaining the aggregate indebtedness at any one time of any political subdivision, there shall be deducted obligations payable solely from the net operating revenues from designated projects and also obligations incurred for the acquisition of revenue producing public works or public utilities which may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon.

Scranton Commission (1964)

Section 7. **Municipal Debt.**—(a) The debt of any county, city, borough, township, school district, or other municipality or incorporated district, shall never exceed fifteen per cent upon the assessed value of the taxable property therein, nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five per cent upon such assessed valuation of property without the consent of the electors thereof at a public election in such manner as shall be provided by law.

(b) The General Assembly may impose additional restrictions and limitations uniform on each type or class of political subdivision on the amount of debt that may be created, either with or without the consent of the electors, and may prescribe the manner in which debt may be created. The General Assembly may provide for the apportionment among political subdivisions of borrowing power within general limitations.

(c) In ascertaining the aggregate indebtedness at any one time of any political subdivision, there shall be deducted obligations payable solely from the net operating revenues from designated projects and also obligations incurred for the acquisition of revenue producing public works or public utilities which may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon.

Pennsylvania Bar Association

In order to restrict Philadelphia's future indebtedness to 30-year maturities for all purposes except major transportation projects, it is recommended that the third paragraph of Section 8 of Article IX be amended to read as follows:

In incurring indebtedness for *the* [any] *purpose of constructing subways and tunnels for rapid transit facilities* the City of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof . . .

Bureau of Municipal Research and Pennsylvania Economy League, *Philadelphia and Constitutional Revision*, 1960

Municipal Debt.—(a) The debt of any county, city, borough, township, school district, or other municipality or incorporated district, shall never exceed fifteen per cent upon the assessed value of the taxable property therein, nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five per cent upon such assessed valuation of property without the consent of the electors thereof at a public election in such manner as shall be provided by law.

(b) Obligations payable solely from the net operating revenues from designated projects are not debt within the meaning of this section.

Pennsylvania Municipal Authorities Association

Article IX
SECTION 9—STATE NOT TO ASSUME MUNICIPAL DEBTS: EXCEPTIONS.

Present Provision

The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrec-

tion, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness.

Historical Note

This Section had its origin in an 1857 amendment to the Constitution of 1838. Prior to 1857 it was possible, and not uncommon, for communities to seek various types of relief through special acts of the Legislature.

Interpretation of Provision

The basic prohibition expressed in this section is one that has fairly general consensus, that is, that the Commonwealth not assume the debt of a political subdivision unless that debt were contracted to enable the state to suppress insurrection.

Comment

Prior Pennsylvania Commissions.

The revisory commissions all recommended that the Constitution continue to prohibit the State's assumption of municipal debt. The Woodside Commission (1959) recommended that Section 9 be kept in its present form. The Scranton Commission (1964) recommended that Section 9 be altered to delete certain obsolete provisions relative to the types of municipal debt which the State may assume and to include within its prohibitions all municipal and private debt.

National Authorities and Organizations.

Neither the Model State Constitution, National Municipal League, nor the Model Constitutional Provisions, American Municipal Association, includes provisions on municipal debt.

Other States.

Approximately two-thirds of the states have provisions in their constitutions restricting the State's power to assume municipal debt.

Preparatory Committee Hearings and Other.

The Pennsylvania Bar Association's recommendations on this section are identical with those of the Scranton Commission.

The only other proposal by organizations that testified was made by the Americans for Democratic Action at the public hearings before the Committee on Taxation and Finance. This proposal recommended the Legislature be permitted to authorize all municipal borrowing to be made in the name of the State and to authorize borrowing on one State bond issue for a number of local governments. The sponsors of this proposal argued that this form of borrowing would result in substantial savings in the costs of floating the bond issues and in the interest rates to be paid to bondholders. Moreover,

it would not place any additional burden on the State, because the State today would find a way to pay off the bondholders of any municipality which failed to pay its obligations.

Alternatives and Proposals

Other State Constitutions

Sec. 20. **Assumption of debts prohibited.** The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association or individual.

Illinois, Article IV

Sec. 1. **Credit not to be loaned.** The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

Iowa, Article IV

6. **Credit of state not to be granted in certain cases.** The credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

West Virginia, Article X

National Authorities and Organizations. No suggested provisions.

Pennsylvania Proposals

Municipal Debt Not to Be Assumed by State Section 8. The state government shall not assume the debt of a municipality unless contracted to enable the Commonwealth to repel invasion, to suppress insurrection or to defend itself in war.

Sproul Commission (1920)

No change in the present provision.

Woodside Commission (1959)

GC*Section [9] 7—**Municipal or Private Debt Not to Be Assumed by State** The Commonwealth shall not assume the debt or any part thereof, of any city, county, borough, [or] township *or other political subdivisions, or of any individual, association or corporation*, unless such debt shall have been contracted to enable the State to [repel invasion, suppress domestic insurrec-

tion] *suppress insurrection or* defend itself in time of war [or to assist the State in the discharge of any portion of its present indebtedness].

Scranton Commission (1964)
(part of Article on Taxation and State Finance

Section [9] 7. **Municipal or Private Debt Not to Be Assumed by State.**—The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough, [or] township *or other political subdivision, or of any individual, association, or corporation*, unless such debt shall have been contracted to enable the State to [repel invasion, suppress domestic insurrection,] *suppress insurrection or* defend itself in time of war [or to assist the State in the discharge of any portion of its present indebtedness].

Pennsylvania Bar Association
(part of Article on
Taxation and State Finance.)

Article IX,
SECTION 10—MUNICIPALITIES TAXING POWERS (TO LIQUIDATE DEBT)

Present Provision

Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Historical Note

Section 10 was part of the original 1874 Constitution. This Section is supplemented by Section 3 of Article XV which requires every city to create a sinking fund which shall be inviolably pledged for the payment of its funded debt. The Constitution of 1838 contained no equivalent provisions.

There have been two amendments to the Constitution creating exceptions to Section 10. A provision of Section 15 of Article IX, which was added to the Constitution in 1913, permits certain municipalities incurring indebtedness for the construction of certain self-sustaining projects to postpone compliance with Section 10's requirements until the projects have been completed and in operation for one year. A 1915 amendment to Section 8 of Article IX liberalizes Section 10's requirements for Philadelphia to repay its obligations over a fifty-year period and to postpone compliance with Section 10's requirements until one year after the completion and operation of self-sustaining projects constructed by Philadelphia from borrowed funds.

Interpretation of Provision

The purpose of Section 10, according to the Pennsylvania Supreme Court, is ". . . to check rash expenditures on credit and to prevent loading the

future with the results of present inconsiderate extravagance."[88] This Section complements Section 8 which limits the amount of borrowing by a municipality. Its requirements not only protect the credit rating of a municipality but also eliminate some of the political advantages of borrowing by placing the responsibility of increasing taxation to pay off the indebtedness upon the municipal officials who proposed the borrowing.

Although the provisions of Section 10 are self-executing, legislation has been enacted to aid in making these provisions more effective. The Municipal Borrowing Law, which governs the borrowing of all municipalities other than the city, county and city institution district of Philadelphia, requires (1) most general obligation bonds to mature in annual installments, the first of which must mature not later than two years after the date of the bonds; (2) ordinances authorizing the issuance of general obligation bonds to make provisions for a levy of annual taxes sufficient for the payment of interest and principal; (3) the payment of such taxes by the treasurer of the municipality into a sinking fund; and (4) the inspection by the Department of Internal Affairs of the sinking funds of most municipalities to determine whether such funds are sufficient to make the requisite payments.[89]

The Pennsylvania appellate courts have ruled that Section 10's requirement that a municipality provide for the payment of indebtedness over a thirty-year period through the collection of an annual tax confers no authority upon a municipality to impose taxes. Such authority must come from the Legislature; a municipality has no power to impose taxation exceeding the amount authorized by the Legislature in order to comply with the requirements of Section 10.[90]

In deciding what types of indebtedness are covered by Section 10, the decisions indicate that the term "indebtedness" has the same meaning for Sections 8 and 10 of Article IX. Hence authority financing and short-term debt payable out of current revenue are excluded from Section 10's coverage.[91]

Where a municipality does not comply with the provisions of Section 10 by failing at or before the time of incurring indebtedness to provide for the collection of an annual tax sufficient to make the requisite payments, the indebtedness nevertheless has been held to be a legal obligation of the municipality.[92] Section 10, the Courts reason, does not affect a municipality's power to borrow but only its mode of exercise; the Constitutional restriction was not intended to prevent those who contract with a municipality from collecting their debts.

The Courts enforce the requirement of Section 10 that a municipality, at or before the time of incurring indebtedness, provide for the collection of an annual tax sufficient to make the requisite payments, by permitting taxpayers' suits to be brought to require the municipality's compliance with these requirements.[93]

Comment

Prior Pennsylvania Commissions.

The Woodside Commission (1959) proposed that Section 10 be kept in its present form. The Scranton Commission (1964) recommended alteration of the provision to make it clear that the Legislature has authority to impose additional requirements.

National Authorities and Organizations.

Neither of the national models—the National Municipal League's Model State Constitution, and the American Municipal Association's Model Constitutional Provisions—includes provisions on municipal debt.

Other States.

The constitutions of approximately 15 states contain requirements concerning the repayment of municipal indebtedness. Most of these constitutions contain provisions similar to those of Section 10 requiring the assessment of an annual tax sufficient to pay off the indebtedness within a certain number of years or when due.

Preparatory Committee Hearings and Other.

The Pennsylvania Bar Association recommended a provision identical with that proposed by the Scranton Commission. The provision proposed would retain the constitutional requirement and permit the Legislature to impose additional restrictions.

Alternatives and Proposals

Other State Constitutions

Paragraph 11. **Levy of taxes to pay bonds.** Any county, municipal corporation or political division of this State which shall incur any bonded indebtedness under the provisions of this Constitution, shall at or before the time of so doing provide for the assessment and collection of an annual tax sufficient in amount to pay the principal and interest of said debt, within thirty years from the date of the incurring of said indebtedness.

Georgia, Article VII, Section VII

Sec. 159. **Tax to pay indebtedness in not more than forty years must be levied.** Whenever any city, town, county, taxing district or other municipality is authorized to contract an indebtedness, it shall be required, at the same time, to provide for the collection of an annual tax sufficient to pay the interest

on said indebtedness, and to create a sinking fund for the payment of the principal thereof, within not more than forty years from the time of contracting the same.

Kentucky, Section 159

Sec. 12. **Limitation of municipal indebtedness; debt retirement.** No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

Illinois, Article IX

National Authorities and Organizations. No suggested provisions.

Pennsylvania Proposlas

Duration and Payment of Debts. Section 18. A municipality shall not incur a debt maturing more than fifty years thereafter. The aggregate amount of principal and interest payable in respect of a debt in any year shall not be less than the amount payable in any later year unless the sinking fund method of amortization is authorized by law. Such sinking fund shall be sufficient to pay the accruing interest on such debt and annually to reduce the principal by a sum not less than three per centum of such principal. The money in such sinking fund shall be invested in the bonds of the United States, of the state government or of a municipality thereof.

On or before incurring a debt by borrowing money, the municipality shall provide for the collection of an annual tax sufficient to pay the principal and interest as they fall due.

Sproul Commission (1920)

No change in present provision.

Woodside Commission (1959)

Section 8—**Tax to Liquidate Municipal Debts**—(Formerly Article IX, Section 10) *Unless otherwise provided by law,* any county, *city, borough, incorporated town,* township, school district or other [municipality] *political subdivision* incurring any indebtedness shall at or before the time of so doing provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Scranton Commission (1964)

Section 8. **Tax to Liquidate Municipal Debts.**—[Any county, township, school district or other municipality] *Unless otherwise provided by law, any county, city, borough, incorporated town, township, school district or other political subdivision* incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Pennsylvania Bar Association

Footnotes to Chapter 4

1. Article XIII has only one section.
2. Some modern constitutional theorists regard state constitutions as being a "granting" instrument as well as a "restraining" instrument. For a discussion on this fundamental question and its bearing on the construction of constitutions, see *State Constitutions: The Shape of The Document*, Robert B. Dishman, published by the National Municipal League, New York, 1960, pages 8–12.
3. Report of the Sproul Commission, December 15, 1920, page 323.
4. *Modernizing Local Government to Secure a Balanced Federalism*, A Statement on National Policy by the Research and Policy Committee of the Committee for Economic Development, July 1966, page 41.
5. *Ibid.*, page 61.
6. *Model State Constitution*, National Municipal League, 1963, page 95.
7. For a description of the background and derivation of Pennsylvania county officers, see *Historical Development of Local Government in the Penjerdel Region*, Monograph 1 of Penjerdel Governmental Studies, Pennsylvania Economy League, Eastern Division, Philadelphia, 1961.
8. Report of the Woodside Commission, page 48.
9. *Ibid.*, page 50.
10. 1967 State Legislative Program of the Advisory Commission on Intergovernmental Relations, Washington, D.C., September 1966, M-33, pages 445–446.
11. National Association of Counties, *The American County Platform*, as approved July 14, 1965, as appearing in *American County Government*, January, 1966.
12. *A Study of a Proposed Office of County Administrator*, Pennsylvania Economy League, State Division, Harrisburg, 1964, page 14.
13. Alexander E. McClure, *Old Time Notes*, I, 39; Constitution of 1838, Article VI, Secs. 1 and 3.
14. Debates of the Constitutional Convention, *op. cit.*, page 776.
15. Purdon's Constitution, Article 14, Sections 1 and 2, Notes of Decisions.
16. Model State Constitution, *op. cit.*, pages 94–99.
17. Purdon's Constitution, Article 14, Section 3, Notes of Decisions.
18. *Loc. cit.*, page 50.
19. Debates of the Constitutional Convention, *op. cit.*, Volume 7, page 141.
20. Purdon's Constitution, Article 14, Section 4, Notes of Decisions.
21. Debates of the Constitutional Convention, *op. cit.*, Volume 8, page 305.
22. Purdon's Constitution, Article 14, Section 5, Notes of Decisions, contains about six pages of fine print on numerous court decisions.
23. Report of the Sproul Commission, *op. cit.*, page 331.
24. Report of the Woodside Commission, *op. cit.*, page 50.
25. Debates of the Constitutional Convention, *op. cit.*, Volume 4, page 780.
26. *Proceedings, op. cit.*, Volume III, page 617.
27. Report of the Woodside Commission, *op. cit.*, page 50.
28. Debates of the Constitutional Convention, *op. cit.*, Volume 5, page 126.
29. *Model County Charter*, National Municipal League, New York, 1956, page 3.
30. 1967 State Legislative Program, *op. cit.*, page 448.

31. John W. Cook, *Fiscal Administration in Pennsylvania Counties*, Department of Internal Affairs, 1966, pages 153-155.
32. *Ibid.*, page 245.
33. *Historical Development of Local Government in the Penjerdel Region*, Monograph 1 of Penjerdel Governmental Studies, Pennsylvania Economy League (Eastern Division), Philadelphia, 1961, page 104.
34. *Philadelphia and Constitutional Revision*, Pennsylvania Economy League (Eastern Division), Philadelphia, 1960, pages 14-15. A more detailed discussion of the Philadelphia Home Rule Charter and the problems of City-County Consolidation is provided in a PEL report of November, 1957, on *A Discussion of Some Proposed Revisions of the Home Rule Charter*.
35. Report of the Sproul Commission, *op. cit.*, page 69.
36. Model State Constitution, *op. cit.*, page 95.
37. Model State Constitution, *op. cit.*, Section 8.04, page 99.
38. *Modernizing Local Government*, *op. cit.*, pages 44 and 60.
39. *Philadelphia and Constitutional Revision*, *op. cit.*, page 16.
40. Dillon, *Municipal Corporations*, Section 237 (5th ed., 1911).
41. 64 Pa. 169 180 (1870).
42. Act of April 21, 1949, P. L. 665.
43. Act of August 9, 1963, P. L. 643.
44. Optional Third Class City Charter Law, Act of July 15, 1957, P. L. 901.
45. Sproul Commission, *op. cit.*, December 15, 1920.
46. Woodside Commission, *op. cit.*, March 9, 1959.
47. *Model Constitutional Provisions for Municipal Home Rule*, Jefferson B. Fordham, American Municipal Association, 1953.
48. *Ibid.*, p. 6.
49. *1967 State Legislative Program*, Advisory Commission on Intergovernmental Relations, 1966.
50. *Ibid.*, 1966.
51. *Modernizing Local Government to Secure a Balanced Federalism*, *op. cit.*, July 1966.
52. The Municipal Borrowing Act (1941 P. L. 159; 53 P.S. sec. 6201 *et seq.*)
53. For a fuller discussion, see *Philadelphia and Constitutional Revision*, Bureau of Municipal Research-Pennsylvania Economy League (Eastern Division), 1960; Chapter VIII—Debt Management.
54. Act 282, 1923 P.L. 688.
55. 1929 P.L. 1212.
56. *Pennsylvania Constitutional Development*, Rosalind L. Branning, 1960; also, *Metropolitics in Pittsburgh*, unpublished Ph.D. dissertation, J. Steele Gow, Jr., 1952.
57. A simple majority was obtained in 82 of the 124 municipalities, but a two-thirds majority was recorded in only 50 municipalities.
58. *Metropolitan America: Challenge to Federalism*, Advisory Commission on Intergovernmental Relations, October, 1966.
59. *Ibid.*, October, 1966.
60. *Philadelphia and Constitutional Revision*, *op. cit.*, 1960.
61. *Pennsylvania Mutual Life Ins. Co. vs. City of Philadelphia*, 22 Pa. Dist. Reports 195 (1913).
62. *Pennsylvania Mutual Life Ins. Co. vs. City of Philadelphia*, 242 Pa. 47 (1913).
63. City Solicitor's Formal Opinion Number 202, March 27, 1957, as reported in *Philadelphia and Constitutional Revision*, *op. cit.*
64. *Philadelphia and Constitutional Revision*, *op. cit.* (Eastern Division), 1960.
65. *Belovsky v. Redevelopment Authority of Philadelphia* 357 Pa. 329, 344.5; 54 A 2d 277, 284-5 (1947); *Sambor v. Hadley* 291 Pa. 395, 140 Atl. 347 (1928).
66. Section 15 of Article IX—a 1913 amendment to the Constitution—contains a provision allowing municipalities and counties (other than Philadelphia) to incur indebtedness of up to 10 per cent of assessed valuation upon approval of 60 percent of the electorate. The Common Pleas Court of Dauphin County (*Appeal of Borough of Summit Hill* 51 Dauphin County 435, 44 D & C 180 [1941]) ruled that this provision, however, referred only to municipalities increasing their indebtedness for the construction or acquisition of waterworks, subways, underground railways or street railways. The 1966 amendment to Section 8, which permits municipal borrowing of up to 15 percent of assessed valuation, renders this provision obsolete.

67. See Act of June 25, 1941, P. L. 159, as amended, 53 PS 6101 *et seq* (Municipal Borrowing Law); Act of June 25, 1919, P. L. 581, as amended, 53 PS 12101 *et seq*.
68. The study entitled *Constitutional Debt Limits for Local Governments in Pennsylvania* was prepared by the Pennsylvania Economy League, Inc., State Division, Harrisburg, Pa., for the Local Government Commission of the General Assembly.
69. *Hamilton's Appeal* 340 Pa. 17, 25, 16 A 2d 32, 36 (1940).
70. See pp. 16-20 of the Reference Manual on Taxation and Finance.
71. See *McAnulty v. City of Pittsburgh* 284 Pa. 304, 131 Atl. 263 (1925); *Charleroi Lumber Co. v. Bentleyville Borough School District* 334 Pa. 424, 6 A 2d 88 (1939).
72. See *Miller & Son's Company v. Mt. Lebanon Twp. (No. 1)* 309 Pa. 216, 163 Atl. 509 (1932).
73. *Graham v. City of Philadelphia* 334 Pa. 513, 6 A 2d 78 (1939).
Ward v. Pittsburgh 321 Pa. 414, 184 Atl. 240 (1936).
74. *McGuire v. Philadelphia (No. 1)* 245 Pa. 287, 91 Atl. 622 (1914).
75. *Detweiler v. Hatfield Borough School District* 376 Pa. 555, 104 A 2nd 110 (1954).
76. *Beam v. Ephrata Borough* 395 Pa. 348, 149 A 2d 431 (1959).
77. *Ward v. Pittsburgh, supra.*
78. *Breslow v. Baldwin Twp. School District* 408 Pa. 121, 182 A 2d 501 (1962).
79. *Hoffman v. Kline* 300 Pa. 485, 150 Atl. 889 (1930).
80. *Long v. Cheltenham Twp. School District* 269 Pa. 472, 112 Atl. 545 (1921).
81. Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions on Local Government Debt*, Report A-10, 1961, pp. 20, 52-53, 91-92.
82. In 1951, New York became the first state to use fair market value as a base. About half a dozen other states have switched to this base in the last decade.
83. In 1965 1966, about 25 percent of municipal tax revenues in Pennsylvania came from non-property sources and more than 25 percent of municipal revenues were obtained from the Federal and State Governments. See *Governmental Finances in 1965-66*, U.S. Department of Commerce, Bureau of Census, Aug. 1967, p. 33.
84. In the present Constitution different borrowing limits are established for Philadelphia, so Pennsylvania does not have limits which are entirely uniform. The revisory commissions all proposed that the provisions creating a different borrowing capacity for Philadelphia be abolished and that Philadelphia be given the same capacity as every other municipality.
85. Pennsylvania Economy League, Inc., op cit., p. 27.
86. The revisory commissions all recommended the complete repeal of Section 15. The reason given is that its other provisions which permit the borrowing of up to 10 percent of assessed valuation in certain circumstances and the postponement of the tax levy required by Section 10 would be rendered unnecessary by the more generous provisions contained in the recommendations of these commissions.
87. Studies on this subject, using different estimating methods, conclude that the additional interest costs exceed one-fourth of one percent. See Heins, A. James: *Constitutional Restrictions Against State Debt*, Un. of Wisconsin Press, 1963.
88. *Potters National Bank of East Liverpool, Ohio v. Ohio Township* 260 Pa. 104, 111, 103 Atl. 605, 607 (1918).
89. Act of June 25, 1941, P. L. 159, as amended, 53 PS 6101 *et seq*.
90. *Gilberton Borough School District v. Morris* 290 Pa. 7, 137 Atl. 864 (1927); *Ohlinger v. Maidencreek Township* 312 Pa. 289, 167 Atl. 882 (1933).
91. *Conrad v. Pittsburgh* 421 Pa. 492, 218 A 2d 906 (1966).
92. *Ohlinger v. Maidencreek Township, supra.*
93. *Ohlinger v. Maidencreek Township, supra* at P. 293; *Sinking Fund Commissioners of Philadelphia v. Philadelphia* 320 Pa. 394, 182 Atl. 645 (1936).

CHAPTER 5

Considerations Other Than Those Included Within Existing Provisions of the Constitution of 1874

In this Chapter, the attention of the delegates is directed to the possibility that the constitution might give recognition to certain subject areas in local government, with reference to which the present constitution is either silent or is only quite indirectly concerned. It will be obvious that some of the discussion contained in this Chapter relates rather closely to the discussion in Chapter Four, particularly to the broad range of Alternatives and Proposals for revision cited therein. But, because such subjects as Inter-local Relations, and Annexation and Consolidation seem to be matters sufficiently distinctive in themselves, however much they are a part of larger considerations treated in Chapter Four, they are discussed here for the information and interest of the Constitutional Convention.

INTERLOCAL RELATIONS

Statement of the Problem

The term "interlocal" refers to the horizontal relationships which local governments have with one another. Such relationships have grown from occasional contacts between officials concerning specific items of mutual interest to frequent and continuing relationships on countless subjects. With nearly 2,700 counties, cities, boroughs, and townships in Pennsylvania, interlocal dealings are legion. Still, the basic pattern of local government in Pennsylvania remains about as it was a hundred years ago. The principal difference is the addition of about 1800 municipal authorities since they were first authorized in 1935.

Equally significant is the emergence of metropolitan areas. The United

States Bureau of the Census refers to these as "standard metropolitan statistical areas" and listed 212 for the nation as a whole in 1962. The following table shows the 12 listed for Pennsylvania with population and number of units of local government within each:

Area	*Population (1960)*	*Units of Government (all types)*
Allentown-Bethlehem-Easton	492,168	211
Altoona	137,270	74
Erie	250,682	93
Harrisburg	345,071	203
Johnstown	280,733	244
Lancaster	278,359	159
Philadelphia	4,342,897	963
Pittsburgh	2,405,435	806
Reading	275,414	200
Scranton	234,531	87
Wilkes-Barre-Hazleton	342,972	168
York	238,336	166
Total	9,623,868	3374

More than 80 per cent of the people of Pennsylvania lived in the areas served by the 3374 local units.

Technically, the metropolitan areas mentioned are not "units" of government. Rather, each is a county or group of contiguous counties which contains at least a city of 50,000 inhabitants, or "twin cities" with a combined population of 50,000. Typically, each is a central city surrounded by a miscellany of other units of local government, each of which retains its identity and authority to deal with local matters.

The exigencies of modern life require more services of local governments than in the past, and while each responds to growing needs, the interests of surrounding governments converge. The convergence is greatest in metropolitan areas, but even the smallest borough or township functions today in less isolation than ever before. Moreover, forecasts of mounting population and other forces, particularly in the fields of transportation, communications, and industrial production, point in the direction of still greater convergence of interests among local governments.

Pennsylvania's local governments have made countless adjustments in their relationships to one another. Both informal and formal cooperation is widespread. Consolidations occur from time to time in the form of annexation or otherwise. Many municipal authorities transcend local boundaries. Both the Federal Government and the Commonwealth stimulate interlocal collaboration in many ways.

Despite the adjustments made, changes have come slowly and with much effort. In the process, social needs have sometimes reached critical proportions and their satisfaction has become increasingly costly. Sometimes, also,

citizens have become discouraged with local governments and turned to the Commonwealth or to the Federal Government, thus accelerating a trend toward centralization of responsibility and power.

Questions arise from these facts which will be of serious concern to the Constitutional Convention. Answers will hinge upon whether the revised constitution should include explicit provisions bearing upon interlocal governmental relations or remain silent with the implication that the General Assembly can best deal with the issues as they arise through the use of general legislative powers. If explicit provisions are to be included, attention turns to substantive proposals and the most appropriate terminology.

Summary of Constitutional Approaches in Other States

A survey of the fifty state constitutions discloses a wide range of approaches to interlocal relationships. Some constitutions say nothing, others say much. From the standpoint of comprehensiveness, the constitutions may be classified as follows:

a. Those which are silent about local governments and/or their interrelationships. Many, especially the older constitutions, make a broad grant of legislative power with the assumption that this conveys authority to take whatever action is appropriate with regard to local governments. In states where this is the case one must look to statutory law for an understanding of interlocal relationships. Most of the New England states, where the counties have played minor roles and government has kept close to the voters through town meetings, follow this practice. Other examples are the constitutions of Delaware and Iowa.

b. Those constitutions which are silent except for provisions directed to specific situations. Pennsylvania's constitution is an example. No positive grant of power to establish and regulate local governments is included, presumably because it was thought to rest with the legislature. Relevant to interlocal relations are two sections, both of which were added as amendments to deal with specific situations. The first (Article XIV, Section 8) related to the consolidation of the city and county of Philadelphia, and subject to action by the legislature, provided that county offices be abolished. The second (Article XV, Section 4) authorized the General Assembly to provide for the establishment of a new municipal corporation which would federate the City of Pittsburgh, the County of Allegheny, and all other local governments within the county.

   Maryland's present constitution is similar. It says nothing about local governments and their inter-relationships but makes special provision (Article XIA) for the establishment of a charter board for Baltimore City and any county.

c. Those constitutions which contain brief general authorizations to establish local governments and prescribe their relationships with one another. The constitution of Kansas is illustrative. Article IX authorizes the legislature to provide for new counties. Article XII authorizes the legislature to provide for the incorporation of cities and the methods by which city boundaries may be altered, merged, consolidated, and dissolved. Nothing else is said about interlocal relationships.

Hawaii's constitution is equally brief and to the point. Except for the brief reference to inter-governmental relations noted below, only the following is pertinent:

> The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such power as shall be conferred under general laws.

d. Those constitutions which authorize a wide range of inter-local relationships, including such features as city-county consolidations and separations, inter-governmental transfers of powers, regional governments, special purpose districts or authorities, and inter-governmental cooperation. The constitutions of Alaska, California, Missouri, and Florida are illustrative.

e. Those constitutions with isolated references to specific types of interlocal relationships. In addition to making a broad grant of power to establish local governments, Hawaii's constitution specifically authorizes the state legislature to provide for inter-governmental cooperation "in matters affecting public health, safety and general welfare."

Tennessee's constitution was changed in 1953 by amendments 7 and 8 to achieve limited and specific objectives. Amendment 7 authorized optional home rule for cities and directed the state legislature to provide "the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered." Amendment 8 authorized the consolidation of cities and counties or any or all governmental and corporate functions.

As suggested on page 201 of this chapter, a basic question is whether Pennsylvania's revised constitution should say nothing, little or much about local governments and their inter-relationships. In making that decision the Constitutional Convention may find helpful the following review of substantive features selected from our state constitutions. The review is not meant to be comprehensive but, rather, representative.

The Urban County

Many counties across the nation which were once rural have become fully or partially urbanized. Where this has happened the question arises as to whether the county as traditionally organized and empowered is adequate

to deal with the problems of modern times. The question is being answered in several ways. Some states have strengthened the county by providing it with optional forms and certain powers usually assigned to municipal corporations. Other approaches include city-county consolidation, "federation," and separation.

Traditionally, counties have been considered administrative subdivisions of the state to assist in providing certain functions, such as elections, law enforcement, and road building and maintenance. To make them urban counties involves granting them responsibility for a significant number of services tailored to meet local needs and desires. Additional functions may be authorized by state constitution or legislature, or functions may be transferred by other governmental jurisdictions. The urban county may be permitted to exercise authority throughout its corporate limits, within unincorporated areas only, or in incorporated jurisdictions specified. The form of urban county governments may be prescribed by the constitution, legislation, or by home rule charters.

The constitution of Ohio illustrates the home rule approach. Article X, Section 3, authorizes county home rule charters with optional forms of government. The charter may stipulate that the county is to be unitary in character or that local powers are to be shared with municipalities and townships. If the unitary form is preferred, the county is organized as a municipal corporation. In this event the rights, properties, and obligations of existing municipalities and townships are surrendered and the area may be divided into districts for purposes of administration or of taxation or of both. If the unitary form is not preferred, the charter stipulates how powers will be divided between the county and component units. In case the exercise of powers granted to the county conflicts with the exercise of powers by municipalities and townships, "the exercise of power by the municipality and township shall prevail." Charter provisions and amendments must be approved by the voters in a manner provided by the constitution.

California's constitution authorizes the formation of city-counties through home rule charters. Article XI, Section 7, authorizes general state laws providing for the consolidation of cities and counties into single municipal corporations. When such consolidations occur, "the provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or prohibited to cities, shall be applicable. . . ." The following section requires that the voters of incorporated cities and towns consent to annexations and consolidations with any other municipality or consolidated city and county.

Section 8 authorizes home rule charters for cities or city-counties having populations of more than 3,500. The same section authorizes any city with a population in excess of 50,000 to adopt a home rule charter providing for a consolidated city-county. Such cities may separate from the county in which they are situated to form a city-county. The new charter must prescribe

territorial boundaries "which may include contiguous territory not included in such city, which territory, however, must be included in the county within which such city is located." The new city-county may, thus, encompass an entire existing county or part of it. The newly formed city-county may be divided into districts for the exercise of such municipal powers as may be granted by the charter. The constitution authorizes the state legislature to provide for annexations by a city-county and the disposition of territory which remains in the dismembered county.

Florida's approach differs from those just outlined. Its constitution singles out three urban counties for special treatment. Article VIII, Sections 9 and 10 grants to the state legislature power to establish, alter, or abolish two municipal corporations which are to be known as the City of Jacksonville and the City of Key West. Both cities may encompass the entire area of their respective counties and they may supplant any or all existing units of government within them. The state legislature may prescribe the territory, form, powers, duties, and functions of the newly created regional governments. The legislature also has authority to divide the territory into subordinate districts and to "prescribe a just and reasonable system of taxation for such municipality and districts. . . ."

For Metropolitan Dade County, Section 11 of the Florida constitution authorizes a home rule charter. For this area "The electors of Dade County . . . are granted power to adopt, revise, and amend from time to time a home rule charter . . . under which the Board of County Commissioners . . . shall be the governing body." Among its provisions, the charter may "change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing" all other units of local government whose jurisdiction lies wholly in Dade County. The charter also prescribes the allocation of powers, duties, and functions between the metropolitan government and the component units which are permitted to exist.

The Dade County arrangement often is referred to as a "federated" one inasmuch as the charter provides for two "tiers" of government and divides responsibilities between the county and component local units. The charter adopted in 1957, as amended, provides for a nine-member county board elected at large. The board appoints a manager and all other officials except members of the school board, court officials, and the sheriff. Functions assigned to the county include planning, mass transit, major streets and highways, assessment and tax collection, penal institutions, hospitals, welfare services, flood control, and water conservation. The county governs rural areas within its boundaries. It also sets minimum standards for municipal services. Component local governments perform services not assigned to the metropolitan government.

Missouri's constitution also makes provision for strengthening urban counties. Article VI authorizes home rule charters for counties with more

than 85,000 inhabitants which vests legislative power in the county for use in areas outside incorporated cities to deal with public health, police and traffic, building construction, planning and zoning. Counties of this size also may perform services for other political subdivisions in the county, except school districts, provided voters in the sub-county units approve.

For the still larger City and County of St. Louis the Missouri constitution provides four options. Article VI, Section 30, grants the people of these areas power to do the following: (1) Consolidate the territories and governments of the area into one municipal corporation to be known as the City of St. Louis; (2) extend the territory of the county so as to embrace the city and provide for a consolidated county-city government which may then extend its limits in the manner provided by law for other cities; (3) enlarge the present and future limits of the city by annexing parts of the county and conferring upon the city exclusive jurisdiction over acquired territory; (4) establish a metropolitan district or districts for the functional administration of services common to the area included therein. The power granted to make these choices must be exercised by vote of the people of the city and county upon a plan prepared by a nineteen-member board of freeholders.

Tennessee provides another instance where counties may be given urban responsibilities. Amendment 8, of 1953, authorized the consolidation of city and county as well as any or all governmental and corporate functions. Such consolidations become effective when approved by a majority of the voters within the municipal corporation and a majority of the voters in the county outside the municipal corporation. The City of Nashville and the County of Davidson took advantage of the authorization mentioned to form a metropolitan government in 1962. The new local government unit is headed by an elective mayor and a forty-one-member council, 35 of whom are elected in single member districts and 6 at large. The charter set up an urban services district of about 75 square miles surrounding Nashville, with provisions for expansion. Certain functions are performed and financed only within the urban services district. Among these are sewage and refuse disposal, street lighting, and a higher level of police protection than is provided outside. County-wide services include several that were previously limited to Nashville. Among these are parks and recreation, libraries, and public housing.

New Mexico's constitution, Article X, Section 4, authorizes the state legislature to provide home rule charters for "combined city and county municipal corporations" in areas having a population of at least 50,000. The consolidation must be approved by a majority of the voters in the city and a majority of those outside the city who may be encompassed. The voting must be separately done.

Multi-County Regional Government

Proposals are made from time to time for the establishment of governments with general powers which will transcend the boundaries of one or more

counties. Several state constitutions authorize the consolidation of two or more counties or the realignment of county boundaries to broaden service areas. Moreover, a number of regional councils exist to provide advisory, consultative, and coordinative assistance to the local governments represented. And, as noted below, a large number of special districts or authorities have come into existence to provide one or more specified services within areas which include one or more counties. But to date no state which has counties (or boroughs in the case of Alaska) has established a representative multi-county unit with general powers of government.

Michigan's constitution, a newcomer in 1964, anticipates the formation of such units. Article VII authorizes counties, townships, cities and villages and goes on to provide, in Section 27, that the legislature "may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide."

The constitution of Massachusetts contains a similar reference. An amendment adopted in 1966 provides that the state legislature shall have the power "to erect and constitute metropolitan or regional entities, embracing any two or more cities, or established with other than existing city or town boundaries, for any general or special public purposes, and to grant to these entities such powers, privileges and immunities as the General Court shall deem necessary or expedient for the regulation and government thereof."

A proposal made in 1967, and summarized below on page 211, by Maryland's Constitutional Convention is more explicit than either of the provisions just cited.

Interlocal Special Districts or Authorities

Numerous special-purpose districts, or authorities, exist today. Most states make use of them. They are independent units of government organized to perform a single or a few functions within one or more political subdivisions. The services most commonly provided are port facilities, sewage disposal, parks, water supply, housing, and airports. Such services usually are financed by the use of revenue bonds backed by service charges, sales, rents, and tolls. In some states, constitutional restrictions upon borrowing have encouraged the growth and use of entities of this type.

Michigan's constitution, Article VII, Section 27, authorizes the state legislature to establish authorities. It adds, however, that whenever possible, authorities shall be designed to perform multi-purpose functions rather than a single purpose function.

Alaska's constitution, Article X, Section 5, authorizes the state legislature to establish special districts or authorities in organized boroughs (counties in other states). To avoid proliferation, no new service area may be established if the service can be provided by an existing area, by incorporation of a city, or by annexation to a city. The legislature may authorize special districts or

authorities to levy taxes, charges, or assessments within the service area to finance special services.

Massachusetts' constitution, as amended in 1966, empowers the state legislature to "erect and constitute metropolitan or regional entities" for any general or special public purpose or purposes.

Most state constitutions do not provide explicitly for the establishment of units of this type. Pennsylvania's constitution says nothing about them. The provisions from selected state constitutions noted below which bear upon interlocal cooperation, agreements, contracts, and functional transfers may be relevant. Both the New York State Temporary Commission on the Constitutional Convention and the Maryland Constitutional Convention Commission suggest provisions for consideration (see p. 210 and p. 211).

Functional Transfers

When powers are granted to particular local governments by constitution or statute, they usually may not be transferred without express authorization. Flexibility is provided when transfers are possible.

California's constitution, Article XI, Section 6, states that "the Legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns. . . ." Furthermore, city and town charters may "provide for the performance by county officers of certain of their municipal functions."

Ohio's constitution, Article X, Section 1, delegates to municipalities and townships authority to transfer, or to revoke the transfer, of any of their powers to the county in which they are situated under regulations provided by general law. The county must approve the transfer of powers to it. "The right of initiative and referendum" is secured to the people in "municipalities and townships in respect to every measure making or revoking such transfer, and to the people of such county in respect to every measure giving or withdrawing such consent."

Michigan's constitution, Article VII, Section 28, provides that the state legislature shall by general law authorize "two or more counties, townships, cities, villages or districts, or any combination thereof among other things to . . . transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved."

The constitution of Texas, Article IX, Section 6, states that county home rule charters may provide for the transfer by cities, towns, districts, or other political subdivisions of functions to the county. Approval by the voters in the county as well as in the local unit making the transfer is required.

Alaska's constitution, Article X, Section 13, authorizes a city to transfer to the borough (county) in which it is located any of its powers and functions unless otherwise prohibited by law or charter. Transfers may be revoked in like manner.

Interlocal Cooperation

Still another way by which local governments may achieve mutually desired objectives is by cooperation. Broadly, cooperation involves interlocal endeavors of all sorts; more narrowly it refers only to voluntary undertakings. Technically, therefore, a mandated joint endeavor or parallel action would not be classed as cooperation.

Cooperation may be casual and informal or it may be structured by formal agreements or contracts. Whether or not the state constitution should remain silent on this type of interchange is debatable, but several provide for it. Constitutions may authorize not only cooperation among local governments but also among other levels of government, including foreign governments and their political subdivisions.

Alaska's constitution, Article XII, Section 2, authorizes the state and its political subdivisions to cooperate with the United States and its territories, and with other states and their political subdivisions, on matters of common interest. The respective legislative bodies are authorized to make appropriations for cooperative endeavors. In addition, Article X, Section 13, provides for inter-governmental agreements, including those for cooperative or joint administration of any functions or powers, by any local government with any other local government, the state, or the United States, unless otherwise provided by law or charter.

Hawaii's constitution, Article XIV, Section 5, provides generously for "Intergovernmental Relations." It authorizes the state legislature to provide for cooperation on the part of the state and its political subdivisions with the United States, or other states and territories, or their political subdivisions, in matters affecting the public health, safety, and general welfare. Funds may be appropriated for the purpose.

Michigan's constitution also makes generous provision for inter-governmental cooperation. Article VII, Section 28, provides that the state legislature shall authorize local governments, or any combination of them, to do the following:

> Enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Moreover:

> Any other provision to this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof,

except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service.

Missouri's constitution, Article VI, Section 16, authorizes local governments to contract or cooperate with one another, with other states and their political subdivisions, or with the United States "for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

California's constitution, Article XI, Section 6, states that "the Legislature may, by general law, provide for the performance by county officers of certain of the municipal functions of cities and towns. . . ." In response to this authorization, some California counties have taken the lead in providing contractual services for sub-county local governments. Los Angeles County, for example, has power to provide services throughout the county, to direct certain special-purpose districts within the county, to perform services transferred to it by other local governments, and to contract with other local governments to provide services. Under the "Lakewood Plan," which takes its name from one of the constituent municipalities, Los Angeles County enters into master contracts with nearby municipalities to provide a wide range of services.

Alternatives and Proposals

MODEL STATE CONSTITUTION

The National Municipal League has for many years been concerned with the problems facing American local governments. Its Model State Constitution, the sixth edition of which was published in 1963, recommends the inclusion of an article on inter-governmental relations. The article would say that nothing in the constitution shall be construed to prohibit the state government and its political subdivisions from cooperating with one another or other governments, or the consolidation of existing civil divisions of the state. Except as limited by general law, local governments would be permitted to share the costs and responsibilities for functions and services provided cooperatively. The League believes that the presence of such an article "will serve the useful purpose of stressing inter-governmental cooperation, which appears to offer the best means of solving the increasingly difficult urban problems straddling political boundary lines."

NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON INTERSTATE COOPERATION

This committee suggested a constitutional amendment to provide maximum flexibility in dealing with two problems: inter-governmental cooperation, and restrictions which make it difficult, or impossible, for state and local

officials and employees to accept cooperative assignments. The first part of the proposal would make it possible, subject to statutory provisions enacted by the state legislature, for the state and its local governments to perform any of their functions jointly or in cooperation with "any one or more other states, or municipal corporations, or other subdivisions of such states, or the United States, including any territory, possession or other governmental unit thereof, or any one or more foreign powers, including any governmental unit thereof." Joint or cooperative financing also is authorized.

The second part of the proposal would make it possible, subject to statutory provisions enacted by the state legislature, for any state and local official or employee to take part in cooperative endeavors without being "required to relinquish his office or employment by reason of such service."

NEW YORK STATE TEMPORARY COMMISSION ON THE CONSTITUTIONAL CONVENTION

This Temporary Commission issued a report (No. 13) entitled *Local Government* in March, 1967, in which it examined various proposals for local government reorganization. Among its suggestions are the following:

1. Metropolitan areas might be permitted or required to establish general purpose governments with jurisdiction over the entire area. As an alternative, one or more single purpose governments might be created to provide such services as transportation, water supply, sewerage and planning.
2. Multi-county areas or regions, which would not necessarily coincide with metropolitan areas, might be permitted or required to establish general or single purpose governments with jurisdiction over the entire area.
3. Urban counties might be permitted or required to perform one or more existing functions of their municipal subdivisions.
4. Counties of less than some minimum population might be permitted or required to consolidate with other counties so that no county has fewer than the minimum.
5. Towns might be permitted or required to dissolve and their functions assumed by the counties.
6. Certain towns, such as those with a small population or a low population density, might be permitted or required to dissolve and consolidate with other towns.
7. In urban areas, adjacent towns and smaller cities might be permitted or required to consolidate either as a city or town; or smaller cities surrounded by a town might be permitted or required to consolidate as a single town.
8. Villages might be permitted or required to dissolve and their functions

assumed by the towns and counties; and villages of specified kinds, such as those of small population, might be dissolved.

9. The creation of school districts independent of general city governments might be permitted or required in cities of 125,000 or more population.
10. Special taxing or improvement districts might be permitted or required to relinquish their status and functions as independent entities to the general purpose local governments.
11. Minimum standards might be required by the constitution for the incorporation of cities and villages.
12. A state or local commission might be established to review or initiate proposals for incorporating new local governments, annexations, consolidations or dissolutions of local governments.

MARYLAND CONSTITUTIONAL CONVENTION COMMISSION

This Commission was established in 1965. An interim report issued in May, 1967, includes a draft of a revised constitution with extensive commentary. Of special interest are the following provisions:

1. The state legislature may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of county and multi-county governmental units, including inter-governmental authorities and popularly elected representative governments, but excluding municipal corporations.
2. Regional governments may be established in three ways: (1) by the state legislature, (2) by the counties within or partly within the region acting concurrently by law, (3) by initiative and referendum.
3. Powers may be vested in a regional government in three ways: (1) component counties may relinquish powers to the regional government, (2) the state legislature may transfer powers from component counties to the regional government, and (3) the state may delegate to the regional government certain of its own powers. Provision is made for the return of powers transferred.
4. Both the state legislature and popularly elected representative local governments may grant to inter-governmental authorities the power to collect service charges, borrow money, impose and collect service charges. The power to impose taxes may not, however, be granted.
5. A county may exercise any power, other than judicial power, or perform any function which has not been denied to it or transferred exclusively to another governmental unit.
6. The state legislature is directed to provide alternative procedures by which county governments are formed. Forms of government may be proposed in one of several ways and approval by the voters is required to make them effective. For those counties which do not avail

themselves of one of the alternative ways of adopting an instrument of government, the legislature is authorized to make the selection by the first of January of the fourth year after the constitution becomes effective.

7. Municipal corporations are subordinate to counties. A county may provide by law for their incorporation, change, merger, dissolution, alteration of boundaries and delegate county powers to them. An existing municipal corporation may not be dissolved or have withdrawn existing powers set forth in its charter without either the consent of its governing body or the consent of the state legislature by law.
8. Local governments may, except to the extent prohibited by law, agree among themselves or with the state for the joint administration of any functions and powers and the sharing of the costs thereof.

CALIFORNIA REVISION COMMISSION

This Commission released a *Background Study Supplement* (No. 6) in July, 1967, with a proposed new section 21 (a) providing:

> The legislature may provide that any governmental unit of the State may contract with other governmental units for the transfer or performance, in whole or in part, of their respective governmental functions.

COMMITTEE FOR ECONOMIC DEVELOPMENT

The Research and Policy Committee of this national organization released a report in July, 1966, entitled *Modernizing Local Government.* While calling for a drastic reduction in the number of local governmental units and the reorganization of these governments, the Committee suggests three interim steps which relate to interlocal relationships:

1. The states should clarify authority and provide financial incentives to encourage local units of government to enter into contracts with each other and with private organizations, thus increasing efficiency and avoiding duplication.
2. Strong local governments should be encouraged to provide technical services to smaller units, charging them at most for the administrative overhead directly involved.
3. County governments should gradually assume area-wide functions which other units cannot perform as effectively. City and county functions should be consolidated wherever practicable.

PENNSYLVANIA CONSTITUTIONAL STUDY COMMISSIONS

None of the four study commissions which have reported during this century has said much about interlocal relations. The Sproul Report of

1920 suggested inclusion of the following section pertaining to contracts between municipalities:

A municipality may, as prescribed by law, contract with one or more municipalities for the joint acquisition, construction, maintenance, supervision or operation of public property, for the creation of agencies to effect any of such purposes, and for the creation of such agencies as may be mutually agreed upon for the good government of the municipalities. Such agencies shall not levy taxes or borrow money. Every such contract shall name arbitrators.

The Report further suggested:

Laws shall be enacted to enable a taxpayer in each city and borough to pay all municipal taxes at one office.

The Report also recommended:

In a county co-extensive with a city or included therein, the county treasury and the city treasury will be united in a single city treasury. The funds and obligations of the county shall be those of the city. . . .

The Woodside Commission Report of 1959 and the Scranton Commission of 1964 made two recommendations pertaining to interlocal relations. The first called for the complete consolidation of Philadelphia County and City. The second would repeal provisions in Article XV, Section 4, of Pennsylvania's constitution which authorized the federation of local units of government in Allegheny County.

PROPOSALS MADE IN HEARINGS CONDUCTED BY THE PREPARATORY COMMITTEE FOR THE CONSTITUTIONAL CONVENTION

A review of the testimony presented at the hearings discloses that no spokesman addressed himself directly to the subject of interlocal relations. Most of the speakers favored constitutional changes which would reduce the number of local governments and provide home rule and optional charters. The inference was generally clear that with these changes local governments would have a freer hand in solving their problems by interlocal cooperation or otherwise.

The spokesman for the Southeastern Chapter of Americans for Democratic Action thought it desirable to permit the transfer functions, including public education, from sub-county units of government to the county. A Modern Constitution for Pennsylvania, Inc., suggested that the state provide "cooperation to local governments who wish to combine facilities or services."

CONSOLIDATION AND ANNEXATION

General Statement of the Problem

"The outstanding demographic characteristic of the Twentieth Century United States is intensive development of metropolitan areas unrestrained

by local political boundaries."[1] With the actual and potential growth of such areas come problems of extreme complexity for the state and its local government units. Every proposed solution requires a choice among conflicting values. Decisions, too, often are affected by lack of information, misunderstandings, emotional reactions and pressures from vested interests.

The problems are most acute where there is a major city which has become surrounded by other smaller municipalities, or where the residents of the urban fringe feel their interests are at variance with the interests of the city. These peripheral areas will inevitably continue to expand because of the population explosion and the continuation of the movement of population from rural to urban areas. "Other factors accounting for the growth of the periphery are (1) rapid transportation facilities, (2) lack of space within the core city to develop new industrial and housing projects, (3) the feeling that the city is not a suitable place to raise one's family, and (4) the inviting prospect of lower tax rates, at least during the earlier stages of development. 'A safe assumption is that centrifugal tendencies in population movement and industry location will continue, should continue, and cannot be stopped.'"[2] Crime, fire and disease do not respect municipal boundaries, and the need for police, fire, water, sewage, building inspection, zoning, planning and other services does not end at those boundaries. Road and street patterns, public transportation, utility facilities and airports all affect both the major city and the surrounding territory.

One approach to dealing with these and other problems faced by local government units is to centralize the authority to make and carry out decisions by permitting, or encouraging, consolidation, merger and annexation.

There is probably no meaningful distinction between consolidation and merger except for the psychological benefit of one term over the other when a cherished corporate identity is lost. "A merger is a process by which A absorbs B without break in the corporate life of A. Consolidation involves the creation of a new corporation which succeeds the constituent units. In local government law the matter depends, to a peculiar degree, upon the express language of statutes. It may be purely a matter of labels, as where 'consolidation' is used to make the absorption of a small municipality by a larger one more palatable to the people of the former. The absorption situation, moreover, has, in some states, been provided for under the head of 'annexation,' a process by which the territory, or part thereof, of one unit is joined to that of another local government."[3]

The Advisory Commission on Intergovernmental Relations has succinctly stated the political and other problems involving annexation and consolidation. Some of the Commission's observations are:

> The major strength of annexation as an approach to reorganization of local government in metropolitan areas is that it broadens the geographi-

cal jurisdiction of municipalities. Moreover, it is a flexible way of broadening jurisdiction. To the extent that it forestalls incorporations or creation of limited purpose special districts, it keeps the governmental pattern from becoming more complex. . . .

Annexation brings areas at the fringes of municipalities under controlled growth and development. If uncontrolled, such areas can be a source of trouble and cost for the entire area--the residents of the fringe areas as well as the annexing city. . . . While annexation can be an important approach to reorganization by itself, the fact that it is generally limited to use in unincorporated areas makes it likely to be most useful as a supplement to other reorganization approaches.

The legal obstacles to annexation in most States are a major weakness in this approach to the reorganization of local governments in metropolitan areas. . . .however, this is not as serious a problem as sometimes is assumed, and the trend is in the direction of making it easier for municipalities to annex territory. The legal obstacles are mainly the exclusive power of annexees in many States to initiate annexation procedures, and their exercise of a veto over adoption of the annexation plan.

Limitation of annexations to unincorporated areas reduces its effectiveness as a tool of reorganization in metropolitan areas where central cities are hemmed in by incorporated territory. However, villages and cities bordering central cities may find the method useful in expanding their territories.

Another weakness of the annexation method is that it may precipitate 'defensive' incorporations by fringe communities that do not want to be absorbed by their big neighbor. The result is additional fractionalization of political authority. A related reflex action is that all the cities in the area may start competing for the annexation of unincorporated territory, producing a haphazard annexation pattern.

There have been examples of abuse of the annexation power by cities taking in attractive areas in terms of high taxable value and minimum problem conditions, and carefully avoiding the problem spots. . . .

Opposition by officials of the territory to be annexed reduces the political feasibility of the annexation approach. . . .

Consolidation of two municipalities also produces a unit of larger geographical area and thereby increases the ability of local residents to control area-wide problems. By reducing the number of governmental units in the area, it lessens the problem of coordinating the attack on these problems. It also makes possible economies of scale in operation and planning by eliminating duplication of certain administrative overhead processes.

A principal weakness of consolidation is its low political feasibility, as indicated by the infrequent use that has been made of it over the years. Over one-half the States do not permit consolidation. When permitted,

the general procedure of separate petitioning and approval by separate majority votes in each of the units makes the achievement of consolidation more difficult.

By replacing two or more governmental units with a single larger unit, consolidation reduces opportunities for political participation. Also, it poses a threat to the tenure and rights of some officials and staff in the consolidated unit. . . .[4]

The Pennsylvania Setting

LEGAL

All of the means by which the area of municipalities are enlarged, reduced or altered, whether they are termed consolidation, merger, annexation or border adjustments, are statutory in Pennsylvania. There is no precision in the words used to describe the process. In fact, the situation is chaotic. Annexation of an entire area of a local government unit by another political subdivision is obviously consolidation or merger, but one statute usually covers this under the word "annexation." Here, as elsewhere, the phrase "boundary adjustment" or some similar phrase can mean, in practice, annexation, although in Pennsylvania there are cases indicating that there should be a distinction.[5] Whatever the phraseology used, it should be understood that this section does not deal with minor boundary line changes.

There are many ways of classifying annexation methods. One of the most useful categorizations is that used by the National League of Cities:

1. Legislative determination: municipal boundary changes are made by special acts of the state legislature.
2. Popular determination: the direct use of political power by the people to determine if a proposed municipal boundary change will take place.
3. Municipal determination: a unit of local government is authorized to extend its boundaries by unilateral action of its governing body.
4. Judicial determination: the court determines if a proposed boundary change shall take place.
5. Quasi-legislative determination: an independent non-judicial tribunal or board is empowered to determine if a proposed annexation shall take place.[6]

In the Pennsylvania statutes a mixture of many of these methods is used, with no apparent basic philosophy.

Over a quarter of a century ago a study of Pennsylvania's annexation statutory and case law concluded with examples of absurd aspects and possibilities under that law, and continued:

And would not more simple and universal annexation laws be a step forward? As the statutes exist on the books today, they are exceedingly complex and varied. In their placement, some laws are set out in the codes of the annexing communities,

while others are in the codes of the community being annexed. But aside from their location in the statute books, the particulars of the statutes are diverse without apparent reason. To constitute one a requisite signer of a petition for annexation, he must at times, depending upon the statute covering the particular situation, be a "freeholder," a "taxable inhabitant," "a qualified elector," or a "qualified registered voter." And the various percentages required to make the petition legal include 5%, 10%, 20%, 60%, 66⅔%, 80%, . . . Are these just arbitrary figures and classifications, or did the legislature give some thought in determining what they considered to be a just and reasonable requirement? If so, it is strange how fairness and reasonableness vary with each act and with the jurisdictions involved. This conglomeration of unrelated requirements and procedures as it exists in Pennsylvania today, would rarely be expounded as a rational method of annexation.

Twenty-seven years later the Pennsylvania annexation law was again reviewed and the author's conclusion was: "From almost any vantage point Pennsylvania annexation law—constitutional, statutory and judicial—is a hodge-podge."[7]

The constitutional context of any consideration of Pennsylvania annexation law is expressed in this popular quotation from Judge Trexler's opinion *In re: Annexation of Mill Creek Township:*

We may start in with the proposition which has been constantly recognized by the courts that there is nothing sacred about the delimitation of the political divisions of a state. That such divisions are mere agencies to carry out the functions of government and are subject to the control of the legislature, who may enlarge their territorial extent, or change their functions, or modify their internal arrangements, or destroy their very existence "by the mere breath of arbitrary decision": Pittsburgh's Petition, 217 Pa. 227; Hunter v. Pittsburgh, 207 U.S. 161.[8]

There is, of course, the constitutional prohibition against special or local legislation,[9] but the fantasy involved in this limitation is clear from the historic cases of *Sample v. City of Pittsburgh*[10] and *In re: City of Pittsburgh, Appeal of Hunter.*[11] After examining Sample, Hunter and other cases, the author of a recent article summed it all up this way: "The law of annexation in Pennsylvania, on the basis of these proceedings, may be stated thus: The General Assembly may do much as it pleases, so long as it does not enact 'special or local' legislation."[12]

The State's annexation laws, their variations, their impact, and related problems have been succinctly described by Dr. Willard R. Hancock, a former director of the Bureau of Municipal Affairs, Department of Internal Affairs:

Because each political subdivision has its own legislative powers, it follows that the procedure for annexing territory varies according to the class of subdivision. . . . Because it is most difficult to find independent governing units willing to relinquish their sovereignty, the record is void in recent times of any city having annexed a borough under this procedure. Other cities cannot annex any part of a borough unless three-fifths of the inhabitants petition and with the approval of the borough council. . . . Most annexing activity involves townships. At one time the procedure for acquiring land from these jurisdictions was relatively simple. Then, a borough or city merely had to secure a petition from a majority of the property owners wanting to be annexed. In 1937, however, the First Class Town-

ship Code was amended to require that the question of losing territory would have to be approved by all the electors in the township . . . No such approval has been granted although several elections have been held throughout the state on the question. Residents in a township residing close to a borough or city might want to become part of the larger municipality but the other residents of the township usually take a position opposing the move. The "left-behinders" are fearful that the loss of territory will produce added financial burdens on them and consistently vote against the idea. Consequently, the first class townships are enjoying complete immunity from losing territory to cities and boroughs. Second class townships have attempted to secure the same legislative immunity but have failed. Therefore, second class townships faced with the loss of territory change their classification to first class. A constant cry from the second class townships for protection from what they call "land grabs" by boroughs and cities has found some support in the Legislature.[13]

The State's various annexation laws are summarized, in part, in Supreme Court Justice Cohen's opinion in *Palmer Township Annexation Case*.[14]

1. The Act of April 23, 1903, P L. 332, as amended . . . concerning annexation of any form of local government unit to a contiguous city has been repealed as to annexation *to* third class cities by the Act of July 11, 1923, P L 1047, Sec. 10, and the Act of May 9, 1929, P L 1964, Sec. 13, and as to annexations *of* first class townships or any part thereof to a city or borough by the Act of July 2, 1937, P L 2803; No. 588, Sec. 10 . . .

2. The Act of May 31, 1923, P. L. 473 . . . authorizes any city of the second class that entirely surrounds a portion of a township of an area not greater than 100 acres to annex that portion by ordinance. This act has been repealed as to first class townships by the Act of July 2, 1937, referred to above.

3. The act of June 15, 1939, P. L. 372 . . . provides for annexation of a borough or township to a city of the second class A . . .

4. The Act of June 23, 1931, P. L. 932, Secs. 501–580 as reenacted by the Act of June 28, 1951, P. L. 662, as amended, The Third Class City Code . . . covers four situations:

> (a) annexation of boroughs having a population of less than 10,000 inhabitants and of all or part of a township to a contiguous third class city, (b) annexation of certain outlying lots in a township to a contiguous third class class city, (c) annexation of a part of a borough to a contiguous third class city, and (d) annexation of contiguous land owned by a third class city to that city . . .

5. The Act of May 4, 1927, P. L. 519, as reenacted by the Act of July 10, 1947, P. L. 1621, ¶401–432, as amended, The Borough Code, regarding (a) annexation of all or part of a township of the first class to a borough, (b) annexation of all or part of a township of a second class to a borough, (c) detachment of territory from a borough and annexation of same to a contiguous township or borough and (d) annexation of territory in a township to a borough when the territory is both owned by the borough and contiguous to the borough, places upon the courts certain duties expressed in various words . . . (Annexation under the foregoing section of the Borough Code was challenged in *Jenner Township Annexation Case*[15] on the ground that it had been repealed by implication by 1953 P. L. 550. The court held that it had not been, and that the two methods of annexation are permitted.)

6. The Act of April 22, 1903, P. L. 247, as amended . . . concerns annexation of any lots lying adjacent to any borough or incorporated town on petition of a majority of the freehold owners of the lots.

7. The Act of July 2, 1937, P. L. 2803, as reenacted by the Act of May 9, 1951, P. L. . . . covers annexation of all or part of a township of the first class to a contiguous borough or city.

8. The Act of July 20, 1953, P. L. 550 . . . involves the annexation of territory in a second class township to a borough, city or township.

ANNEXATIONS IN PENNSYLVANIA

Despite the complexities and confusions created by Pennsylvania law, annexations have taken place in this State. In the period 1956-1967, available data indicate that approximately 66 political subdivisions were successful in 165 annexation proceedings involving some 5,600 acres of land. About 60 per cent of the annexing units during this period were boroughs; another 30 per cent were cities of the third class, the largest government unit being the City of Erie. The City of Allentown, with a population of about 107,000, also annexed approximately three acres during this 10-year period. Except for these two cities, no other large Pennsylvania city annexed any territory in this time span.[16]

The unit of local government most "vulnerable" to loss of territory during the period 1956-1967, was the township of the second class. Jurisdictions within this classification were involved in about 80 per cent of the 165 proceedings; their land "losses" approximated 3,500 acres or about 63 per cent of the acreage annexed during this time period.[17]

No major consolidation or merger of cities, boroughs or townships occurred during the ten-year period. Except for the merger in the 1950's of East Mauch Borough and Mauch Chunk Borough to form Jim Thorpe Borough, involving about 6,000 people, no other merger or consolidation took place.

In 1966, there were more than 700 annexations nation-wide, equaling or slightly exceeding the number of annexations that occurred during the last several years. In the nation one out of every five municipalities with a population over 5,000 annexed territory during 1966. In Pennsylvania there were eight political subdivisions annexing territory: six of them have populations greater than 5,000 which represents less than 2 per cent of all Pennsylvania jurisdictions whose populations exceed 5,000.[18]

Although the data indicate certain results, it is not possible to derive additional findings such as: the effect of the annexation on the annexee, reasons for the proceedings, interested parties involved, number of new governmental units created because of a "threat" of annexation and the services provided as a result of the annexation. Equally important, it is not possible to measure the "benefits" and "costs" resulting from the State's confusing and complex annexation statutes.

Constitutional Approaches in Other States

The most common negative constitutional provision is that against local and special legislation which was discussed in reviewing the Pennsylvania situation. However, the Alabama Constitution of 1901 in Article 4, Section 104, has a proviso that the prohibition against a special, private or local law "shall not prohibit the legislature from altering or rearranging the boundaries of the city, town or village." The Florida constitution grants the legislature specific power to establish and abolish municipalities and counties, provide for their government, prescribe their jurisdiction and power, "and to alter or amend the same at any time."[19] The Constitution of Georgia of 1945 bans a special law "in any case for which provision has been made by an existing general law."[20] No local or special law can be passed unless notice of the intention to apply for it has been published.[21] In Illinois, the General Assembly is empowered to provide for "the annexation of territory to or disconnection of territory from" Chicago, but the consent of the majority of legal voters voting on the question in the city and the same in the territory to be annexed or disconnected must be secured.[22] The Louisiana Constitution treats East Baton Rouge Parish as a special situation in this same manner. A commission is authorized to propose a plan of government which may provide, among other things:

(a) For consolidation, or reorganization, of all or part of the local governmental units, agencies and sub-divisions in the parish, for the elimination or transfer of powers and functions of such units, agencies and sub-divisions, for the creation of one or more new local governmental units, agencies and sub-divisions, for the reorganization of one or more local governmental units, agencies or sub-divisions, for the extension of municipal limits, and for all matters necessary or appropriate to the effectuation of such provisions, including, without limitation, the assumption by one local governmental unit, agency or sub-division of indebtedness of another or other and transfer of official personnel records, funds and other property and assets.[23]

The plan of government is not effective until it has received the assent of a majority of votes cast in an election for the purpose of passing on the plan. In Missouri the constitution grants special powers to the people of the city of St. Louis and those of the county of St. Louis to:

(1) consolidate city and county under the municipal government of the city of St. Louis; or (2) to extend the territorial boundaries of the county so as to embrace the territory within the city and to reorganize and consolidate the county governments of the city and county, and adjust their relations as thus united, and thereafter the city may extend its limits in the manner provided by law for other cities; or, (3) to enlarge the present or future limits of the city by annexing thereto part of the territory of the county, and to confer upon the city exclusive jurisdiction of the territory so annexed to the city; or, (4) to establish a metropolitan district or districts for the functional administration of services common to the area included therein. The power so given shall be exercised by the vote of the people of the city and county upon a plan prepared by a board of freeholders. . . .[24]

This constitution also permits any county of 85,000 population to frame its own charter and become a body corporate and politic.[25] The government of any cities, towns or villages not in a county which has done this "may be consolidated or separated, in whole or in part, with or from that of the county or other political subdivision in which such" cities, towns or villages are situated.[26]

The California Constitution provides several options: Article XI, Section 3, authorizes the legislature to "provide for the alteration of county boundary lines, and for the formation of new counties"; Section 7 authorizes general laws providing for the consolidation of cities and counties into a single municipal corporation; and Section 7½b requires that the voters of incorporated cities and towns consent to annexations or consolidations with any other municipality or consolidated city and county.

The Montana legislative assembly has very broad powers to act by general or special law in providing the form of government for counties and municipalities, abolish cities or towns, abolish city or town government, unite, consolidate or merge cities and towns and county under one municipal government, "and fix and define boundaries of the territory so governed," etc.[27] A referendum is required only when a form of government is adopted or discontinued.

The Kansas constitutional provision is similar and states:

> The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved . . .[28]

The Ohio scheme allows any county to frame and adopt or amend its own charter, which may provide for the concurrent or exclusive exercise by the county, in all or part of its territory, of all or any designated powers vested in municipalities. It may organize as a municipal corporation and succeed to the rights, properties and obligations of municipalities in its territory. However, quadruple approval majorities are required as follows: (1) in the county, (2) in the largest municipality, (3) in the county outside such municipality, and (4) in each of a majority of the combined total of municipalities and townships in the county. (See Article X, Sections 3 and 4.) Since 1957 the last requirement has applied only to counties of 500,000 population or less.

This organic act also has provided for over a quarter of a century that municipalities, with the consent of the county, may transfer to the county any of their powers, or revoke such a transfer, but "the rights of initiative and referendum shall be secured to the people of such municipalities . . . in respect of every measure making or revoking such transfer, and the people of such county in respect of every measure giving or withdrawing such consent."[29]

The Oklahoma constitution permits cities of more than 2,000 inhabitants to frame a home rule charter which becomes effective if approved by a majority vote of the qualified electors of the city and approval by the governor.

Gubernatorial approval is to be given if the charter is not in conflict with the constitution and the laws of Oklahoma.[30] However, the state supreme court has denied home rule cities the power to annex adjacent territory without the consent of the inhabitants and also compliance with the general annexation statutes.[31]

Washington has a limited home rule provision in its constitution,[32] but the court there held that annexation to home rule cities is governed by general annexation statutes and not the precedure for amending home rule charters.[33] This is said to be "the nationally prevalent view."[34]

A very simple home rule provision of the Texas constitution has been construed to give home rule cities broad powers of unilateral annexation.[35] These cities may exercise any power the legislature could have bestowed upon them if they chose to draft their charters to that effect. The home rule amendment was held to have deprived the legislature of its former power to grant and change charters by special law.[36] The legislature was not incensed, for implementing legislation has been generous, even including among the powers a home rule city may confer upon itself by charter the "power to fix the boundary limits of any said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city according to such rules as may be provided by said charters."[37]

Alaska has the most interesting and potentially productive constitutional (as distinguished from statutory) scheme of all.

> A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board subject to law, may establish procedures whereby boundaries may be adjusted by local action.[38]

The Supreme Court of Alaska has held that this section is constitutional.[39] The attack on it was based on the proposition that a popular referendum is somehow constitutionally requisite. In reviewing the history of the provision Mr. Justice Dimond stated, "Article X was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 15, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee . . . lies in placing the process at a level where area-side or state-side needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively."[40]

Proposals relating to annexation and consolidation are many and varied. Some are constitutional in nature; many relate to revisions to, or changes in, the statutory law. Singled out for presentation in this section is a representative sampling of some suggested "model" constitutional provisions and policy guidelines covering annexation and other means by which municipal boundaries may be altered.

American Municipal Association (now The National League of Cities)

The proposal vests the state legislature with the responsibility for developing the necessary legislation. The AMA "model" provides:

Section 2—Incorporation and Corporate Changes

The legislature shall provide by law, general in terms and effect, for the incorporation and government of municipal corporations and the methods by which municipal boundaries may be altered, municipal corporations may be consolidated and municipal corporations may be dissolved. The legislature shall, by such law, facilitate the extension of municipal boundaries to the end that municipal territory may readily be made to conform to the actual urban area.[41]

This proposal recognizes the various interests (principally the state, the jurisdiction itself, and the general geographic area in which the governmental unit is located) concerned with consolidation, annexation and dissolution; therefore, the suggested provision mandates legislative action rather than granting constitutional power to local units to develop a means of handling annexation and related matters. "The legislature, by language which is plainly hortatory, is told that what is desired is legislation which facilitates municipal expansion to include areas which are urban in character with a view to making the organized community conform to the actual urban community."[42]

National Municipal League

The League, in its *Model State Constitution,* has a short and simple provision relating to matters of annexation, consolidation and dissolvement. This suggested section (8.01) reads:

Organization of Local Government. The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries. . . .[43]

This provision is similar to the AMA proposal; however, the NML section is broader in character in that it relates to all "civil divisions" and not just to municipal corporations. The League is concerned with the multiplicity and complexity of local government, and in its opinion:

If a system of local government is to operate effectively, the maze of civil divisions found in most states must be rationalized. Freedom of excessive constitutional

strictures would permit the legislature and the localities, working together, to reorganize counties, consolidate local governments and create federated communities if such action can best serve urban age needs.[44]

Advisory Commission on Intergovernmental Relations

The Commission has not developed a "model" constitutional provision; however, the agency's policy recommendation relative to annexation contains guidelines which may be useful in the development of a constitutional provision. The Commission's recommendation calls for the states to:

. . . examine critically their present constitutional and statutory provisions governing annexation of territory to municipalities, and that they act promptly to eliminate or amend—at least with regard to metropolitan areas—provisions that now hamper the orderly and equitable extension of municipal boundaries so as to embrace unincorporated territory in which urban development is under way or in prospect. As a minimum, authority to initiate annexation proceedings should not rest solely with the area or residents desiring annexation but should also be available to city governing bodies. There is also merit to the proposition that the inhabitants of minor outlying unincorporated territory should not possess an absolute power to veto a proposed annexation which meets appropriate standards of equity . . .[45]

Committee for Economic Development

Modernizing Local Government, a report prepared and published by this Committee, calls for a number of reforms in local government. Extremely critical of "outmoded forms" and the multiplicity of local units, the report proposes that states act to correct these and other identified problems.

The annexation and boundary problem, in the Committee's opinion, should be dealt with by a state agency, specifically a boundary commission. The Committee's report contains such a recommendation. It reads:

Each state should create a boundary commission with continuing authority to design and redesign local jurisdictional lines, and to set timetables for consolidations and annexations.[46]

The Committee further suggests that local units unable to provide minimum levels of service be merged and consolidated according to such criteria as population, accessibility, communication patterns, revenue basis, and geography.[47]

Maryland Constitution Convention—1967

The local government article in the suggested constitution for Maryland emphasizes regional governments and counties. The former would be a supercounty while it is proposed that the counties be granted unusually broad and inclusive powers. Proposed Article VII, Section 7.14, reads:

A county may provide by law for the incorporation, change, merger, dissolution and alteration of boundaries of municipal corporations located in the county, and

may delegate powers of the county to any municipal corporation. No existing municipal corporation may be dissolved or have withdrawn any existing powers set forth in its charter without either the consent of its governing body or the consent of the General Assembly by law.[48]

County boundary changes, as suggested for Maryland, are to be accomplished by statutory law. Proposed Section 7.02 provides that:

The General Assembly may provide by law for the establishment, incorporation, change, merger, dissolution and alteration of boundaries of counties and multi-county governmental units, including intergovernmental authorities and popularly elected regional representative governments, but excluding municipal corporations. A law altering the boundaries of a county shall be enacted only by the affirmative vote of at least three-fifths of all the members of each house.[49]

New York Constitution Commission

The Temporary State Commission on the Constitutional Convention (1967) did not make specific recommendations. The Commission's report, however, did discuss major constitutional issues for consideration by the convention delegates. The issues viewed important by New York's Commission are:

1. Removal or modification of existing restrictions on annexations as they relate to:
   a. Consent of the inhabitants of the territory proposed to be annexed.
   b. Consent of the governing bodies of each local government whose area is affected.
   c. Present equal constitutional status of local governments (county, city, town, villages) in relation to which government can now annex the territory of another.
2. Substitution for present provisions of administrative machinery for annexations and the establishment of constitutional standards, or directives to the Legislature to establish standards, for annexations deemed to be in the public interest.[50]

During the period of 1957–1961, the State of New York created a number of commissions to study and revise the State's constitution. These commissions were established after the voters in 1957 refused to sanction the calling of a constitutional convention. The 1959 Study Commission made a series of recommendations for improving local government. Its proposed constitutional provision for annexation provided that:

No territory shall be annexed to a city until the people of such territory shall have consented to annexation by a majority of those voting on the question.[51]

Proposals by Pennsylvania Constitutional Commissions: The Sproul, Earle, Woodside and Scranton Commissions

Pennsylvania has had four reports on the revision of the Constitution in this century, three of which dealt directly with the problem of annexation. In 1920, the Sproul Report recommended inclusion in a revised constitution of the following Section 6 of a proposed Article XIII:

A city or borough shall not be established or its boundaries changed except with the consent of a majority of the electors resident within the proposed boundaries voting on the question and of a majority of the electors in the proposed added or excluded area voting on the question.[52]

The Woodside Commission Report of 1959 suggested that Article XV, Section 1 be changed to read:

The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved.[53]

The 1964 Scranton Commission proposed the following constitutional annexation provision:

(a) The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which with the consent of the electors of the political subdivisions involved municipal. boundaries may be altered and municipalities may be consolidated or dissolved.[54]

The principal difference among the three proposals involves the fundamental matter of a referendum. The Sproul proposal would *constitutionally* mandate an election in all areas affected and changes would not occur until a majority of the electors in these areas consented to a change. The Scranton Commission proposal also necessitates an election but specifics as to the referendum requirements are to be provided by the General Assembly. The 1959 proposal is silent on this matter. The suggestion is similar to the NML and AMA proposals in that it vests the legislature with responsibility without detailing actual requirements, thereby permitting flexibility.

The 1935 Advisory Committee on Constitutional Revision, in its report to Governor Earle, set forth no draft language for constitutional changes, but the Committee's report did contain recommendations pertaining to annexation and consolidation. It suggested:

1. The Legislature should have wider powers in classifying municipalities and reorganizing local government.
2. The Legislature should be given the power to enact charters for metropolitan areas such as that of Pittsburgh.[55]

Except for the 1920 Sproul Report, none of the other Pennsylvania constitutional study committees or commissions suggested proposals for amending Article XIII of the 1874 Constitution. The Sproul Committee proposed that:

A new county shall not be established if it would have less than three hundred square miles and fifty thousand inhabitants or if a line thereof would pass within ten miles of the boundary of the county seat of a county proposed to be divided or if its establishment would reduce another county below such area or population. A new county shall not be established without the consent of a majority of the electors resident within the proposed boundaries thereof voting on the question.[56]

The Pennsylvania League of Cities endorses the Woodside Commission's recommendation, but proposes an addendum constitutionally mandating the establishment of a boundary commission. The League suggests that the Pennsylvania Constitutional Convention might use as a "starting point" Article X, Section 12 of the Alaska Constitution. Boundary commissions, in the League's opinion, ". . . provide a practical, workable method of adjusting local governments to the demographic needs of the late 20th Century and beyond."[57]

Another organization suggesting specific boundary change proposals is the Pennsylvania Bar Association. Its proposal constitutes a revision of Article XV, Sections 1 and 2. The language is the same as the Woodside Commission recommendation and reads:

> The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved.[58]

The Bar Association further proposes in its suggested optional plans of county government that ". . . if the plan involves the elimination of existing political subdivisions," a referendum would be required in the jurisdictions to be abolished. These jurisdictions would not be eliminated unless the electorate voted favorably for the proposals.

Other groups participating in the hearings conducted by the Local Government Sub-Committee offered no specific constitutional recommendations; however, several commented on the need for action or approved proposals made by other organizations.

The League of Women Voters of Pennsylvania endorses the Bar Association's recommendations, with the exception that it wants the provisions expanded to include all local governmental units.[59] The Pennsylvania Home Builders Association states:

> If Local Government as we know it today is to survive, it must offer the citizens it serves, both individual and corporate, maximum service at *minimum* cost. As we view it, the only possible way to do this is to form stronger and larger units of government. Such units would have the obvious advantages of geographic size, fiscal soundness through a solid tax base, and adequately trained personnel.[60]

Upon questioning by the Sub-Committee, the Association's representative agreed that the boundary commission approach would be an acceptable way to resolve many of the local government problems he identified in his prepared statement.

In the opinion of the Americans for Democratic Action, a new constitution should provide home rule options for county and local government, but within carefully delineated standards such as:

Counties shall be created by the Legislature and may be divided by it from time to time with the approval of the residents affected except that no county shall be created which shall contain at the time of its creation fewer than 50,000 residents. . . .

That there shall be created such local governmental units within each county and in such manner as the Legislature may determine, except that no local governmental unit shall govern fewer than 25,000 residents. . . .

Significantly, the size of the unit which is specified as the minimum for local government is smaller than the size which has already been determined to be a minimum for a properly functioning school district, and the boundary lines of such school district might be in many cases appropriate boundary lines for local governmental units.[61]

The Bar Association's proposals for revising and consolidating the Constitution's Articles XIII, XIV, and XV also are endorsed by the organization, A Modern Constitution for Pennsylvania, Inc. It, however, suggested that additional revisions are in the public interest, particularly because of problems created by the multiplicity of local governments in Pennsylvania. To reduce the number of local units, the AMCP suggests provisions be included in the constitution:

Requiring the Legislature to establish and maintain minimum standards for local governments, based on population, area, fiscal capacity, growth rate or other determinants, and to encourage the voluntary consolidation of the less effective local units of government

Providing state aid to local governments whose consolidations have the approval of their voters, but where the equitable disposition of their assets and debts poses special problems.[62]

The Committee for Economic Development suggests a number of proposals to make local government more effective and economical. These recommendations originally were reported in the Committee's publication, *Modernizing Local Government,* and as they pertain to annexation, the suggestions involve the creation of a boundary commission and the development of criteria or standards for the consolidation or merger of various small governmental units.[63]

Only one organization took the position that the State's annexation legislation should not be changed. In its prepared statement, the Pennsylvania State Association of Township Commissioners said, "This Association is in opposition to any legislation which would liberalize in any way the present annexation laws.[64] Another organization, the Pennsylvania Local Government Conference, which represents all Pennsylvania local public policy organizations, took no position regarding the matter of annexation, consolidation or mergers. Upon Committee cross examination, the Conference's chairman explained that because of the nature of the organization it is not possible to develop a proposal agreeable to all or a majority of its membership; therefore, the Conference has no position relative to annexation, consolidation or merger of local government units.[65]

An obvious first step in assessing alternative "solutions" to the State's annexation problem is to determine to what degree, if at all, a referendum is to be controlling. In some states, a referendum is required by constitutional fiat; in other states the fiat is legislatively imposed. Usually the provision, whether it is constitutional or statutory, calls for a majority vote in both the annexing and the annexed territory. The referendum requirement is much less restrictive, of course, if it merely requires a majority of the total votes cast in both areas to be favorable to annexation, but this is no longer a common way of measuring the popular reaction.

There is no Federal constitutional impediment to an annexation or consolidation plan which does not include a referendum.[66] The Fifteenth Amendment to the United States Constitution does indeed protect citizens against an abuse of legislative control over municipal boundaries when that control is exercised in an attempt to deprive voters of their franchise because of race, creed or color,[67] but such situations are fortunately rare. The usual attack is based on all alleged deprivation of property without due process.

Thus one approach is to limit the constitutional provision to a referendum requirement, leaving everything else to statutes. This preserves the democratic process as it is usually defined. However, it builds inflexibility into the law, prevents legislative experimentation and enhances the likelihood that immediate, short range objectives rather than long range objectives will be given greater weight. Moreover, if the democratic ideal is believed to require a referendum, it can be argued that the total of all votes is the more appropriate gauge of what the involved citizens desire. Otherwise, a minority of the whole can thwart a majority.

One authority, in referring to the principle of self-determination and the referendum, noted that it can ". . . stifle corporate expansion; it prevents the elimination of unnecessary multiplication of governmental units in the metropolitan area. Political irresponsibility continues to flourish in the fringe under its protection. It should therefore be described so that annexation can effectively be used to eliminate multiplicity of governments in metropolitan areas."[68]

The drafters of "An Act to Establish Standards and Procedures for Municipal Boundary Adjustment"[69] list as a basic deficiency in present day legislation that "through elections, local prejudices and jealousies become the primary controls over whether urban government will be extended. These short-sighted considerations are inherent even in the recently amended state procedures."[70] The drafters continue:

> The principal argument for retaining elections is grounded in some sense of "the consent of the governed"—that an individual should have the right to decide whether he wants to be the resident of a big city, a suburb or a rural community. He has, so the argument goes, by moving to an area, located with an expectation

that government and taxes will remain substantially static. This argument is logically unsound in light of present day urban society for at least four basic reasons:

1) The individual is not given a vote on zoning ordinances—which limit the size of his house, the size of his yard, and the use of his land—because it is a tenet of urban society that over-all community needs require the sacrifice of some private goals in order to achieve the greatest social utility in the area . . .

2) The individual has in fact already made the choice to live in an urban community and to obtain his economic and social livelihood from that community. It is untenable "that dwellers within the 'fringe areas'—whose location is meaningful only in relation to the central city –should be given a veto power over the geographic, economic, and governmental destiny of (an) area . . . whose proximity largely gives affected properties whatever tangible desirability they have."

3) Municipal government is state government. Once all municipalities were located and expanded by acts of the state legislature. Some still are . . . The states established municipal government in order to handle efficiently the problems of local urban administration. Thus as the creature of the state, the municipality should be regulated—at least to the extent of the limits of its jurisdiction—by the state. A lack of democracy is not the question here if the state legislature's creature, a board, administers the program.

4) Elections are not the only way for adequate expression of the popular will. Hearings in which all interested parties can be heard serve as well to express the degree of opposition and assure that all rational arguments are considered.

Given these theoretical justifications, it is well to examine the political feasibility of not holding boundary adjustment elections. Here is the real fallacy in the argument of most critics of municipal boundary adjustment. Often, elections are not required for incorporation . . . It is simply not un-American to make boundary adjustments without popular consent. It is done in vast parts of the United States.[71]

Perhaps the easiest way to sum up the case for self-determination is to say that it seems consistent with our sense of fair play. In its heyday it had a strong emotional appeal.

A constitutional convention should also consider what is to be done about requiring the legislature to act only by general laws, or permitting it to act by special and local legislation when dealing with annexation and consolidation. If a general law is the choice, the convention might well consider a prohibition against multiple statutes. A single, comprehensive, integrated act covering all annexation and consolidation situations would avoid the hodgepodge of confusing and seemingly contradictory statutes that have plagued Pennsylvania. The single statute would be as easy to amend as several statutes, and the amendments might be more carefully considered in their relationship to the remainder of the act. Flexibility would not be lost, and basic principles of a sound annexation law could be incorporated throughout the act.[72] This provision relative to basic annexation principles would be unique, but uniform annexation laws are not.[73] It could be included with a mandate for a general law, and with the clause protecting self-determinations. Permission to use special and local laws would, of course, be inconsistent with both of these provisions.

If the primary or an alternative method of boundary adjustment is to be by

legislative determination, local and special laws must be allowed. This power in the legislature can break a deadlock which can easily develop when the usual method of annexation includes self-determination. On the other hand, as the National League of Cities has pointed out:

> The legislators may enact arbitrary and capricious statutes; there may be a considerable and undesirable amount of legislative interference with local affairs; the legislature may be controlled by rural groups who view urban problems in a negative manner. Frequently there is an entrenched custom in the legislature described as 'legislative courtesy' whereby the legislators honor the wishes of the delegate or delegates from the affected area and their opposition may thwart any action. It is clear those states that utilize legislative determination as the sole means of effecting annexation are those having the least annexation activity. City boundaries appear to be frozen at their present limits.[74]

The most recently adopted constitutional provision concerning annexation is that of Alaska which established a commission in the executive board of the state government to consider and report to the legislature on proposed boundary changes. If both houses do not disapprove within 45 days, the changes become effective.

If an administrative agency of this type is considered the proper approach to the annexation problem, there is much to be said for giving it express constitutional sanction. Local boards or commissions are not an unusual device in dealing with annexation; even some Pennsylvania statutory procedures make use of *ad hoc* commissions. If they are merely creatures of statute law they may be struck down as attempting to exercise unconstitutional delegations of legislative power under the doctrine of the separation of powers. In fact, the delegation of the state's power to modify municipal boundaries being vested in the legislature may raise constitutional problems, whether the recipient of the power is the people, the municipal government, the county board, the judiciary, or an administrative agency.[75] In Georgia the usual separation of powers provision that the legislative power is vested in the legislature was all the basis the court needed to hold that *only* the legislature could exercise annexation powers. Parts of the Home Rule Act[76] and all of the general annexation legislation[77] were invalidated on this ground. In other states proper drafting of the statute, with the inclusion of standards to guide the delegate, or one of the formulas[78] that help to make delegations palatable to courts should protect a statute from this type of attack.

In requiring state-level participation in annexation determinations, the Minnesota constitution is moving along with the modern trend. Minnesota by statute created the Minnesota Municipal Commission in 1957. It has authority over incorporation of villages and detachment of property from a municipality as well as annexation. A public hearing before the commission is initiated by (1) resolution of the annexing municipality, (2) resolution of the township containing the area to be annexed, or (3) 20 per cent of the freeholders or 100 freeholders, whichever is less, residing in the area to be an-

nexed.[79] There is a referendum requirement.[80] Within a month after the effective date of each federal census the commission is required to determine whether unincorporated areas with over 2,000 residents should be incorporated, annexed or remain as a township. "If it selects annexation, the Commission 'initiates proceedings,' which, in most cases, results in a referendum."[81] Nevertheless, one of the most perceptive students of local government has stated that "An imaginative exercise of this power will enable the Minnesota Commission to take a positive lead in the organization of local government in urban areas."[82]

Wisconsin's statute requires state-level administrative review in annexation involving an area of more than one square mile[83] and those within metropolitan communities.[84] In the latter case the annexing municipality must obtain a circuit court determination that the annexation is in the public interest, and the court must secure an advisory opinion from the director of the planning function in the department of resource development on this issue of the public interest. As compared to the Alaska law, the weakness in Wisconsin is that the administrative review is purely advisory. For example, "In the case of annexations within metropolitan communities, the director submits his recommendations to the annexing municipality. This body must consider the director's report before taking final action, but it need not concur in his opinion."[85]

In California, "a local agency formation commission has been created in each county in the state to review and approve or disapprove the incorporation of municipalities, the formation of special districts, and the annexation of territory to municipalities. These commissions also have the power to adopt standards and procedures for the evaluation of such proposals and to govern their activity by the promulgation and enforcement of rules and regulations. All proposals brought before the commission may be modified by the commission or held in abeyance for a period not to exceed six months."[86]

Thus, Alaska, Minnesota, Wisconsin and California are all using administrative agency review as one device to attack the annexation problem. The device, in general, is evaluated by the National League of Cities as follows:

> The quasi-legislative or administrative method of making boundary changes is attractive from several viewpoints. Under this method, a special state agency is created to aid local governments resolve their boundary questions; this method may reduce municipal rivalries and jealousies caused by unwise and inopportune annexations or annexation attempts. The state agency may enlist the services of experts to assist in the solution of urban issues. As a continuing body, its experiences may be maintained and applied to cases coming before it with ever growing skill and discretion. In short, this body may become a constructive force for the orderly growth of incorporated areas.
>
> Similar to other boundary change methods, the administrative determination method has drawbacks. These drawbacks are, however, more potential than real. Legislative attention to careful drafting of the relevant statutes and providing the commission with adequate appropriations to do its work, coupled with the appointment of well-qualified commissioners, should be sufficient to avoid them. For

example, unless the authority of the commission is clearly defined by the legislature, the courts may find that there has been an unlawful delegation of legislative power. Or, if the commission rendered an unpopular or questionable decision, pressure might be applied to the legislature to curb the activities of the commission. Demands might be made that the commission's appropriations be reduced or attempts instituted to alter the commission's personnel for partisan political reasons.[87]

In several states, including Pennsylvania, and notably in Virginia, the courts are involved in some stage of the annexation process. This may raise constitutional questions as to the power of the legislature to delegate to the court, and the power of the court to exercise the delegated legislative authority. Therefore it is properly a device for the consideration of a constitutional convention.

A brief and lucid description of the Virginia system may be found in an article in the *Illinois Law Forum* by Hugh J. Graham, Jr., entitled "Change in Municipal Boundaries."[88] The following excerpts are from that article:

> Proceedings may be initiated by ordinance (in form of a petition) of the council of the town seeking the annexation, or by petition of 51 per cent of the qualified voters of the territory adjacent to the city or town. In either case the petition is addressed to the circuit court. . . .
>
> The Virginia statute contains elaborate provisions for constitution of a three judge court to hear and determine the proceedings. . . . The court remains in existence for five years after granting any petition for annexation to enforce the performance of the terms and conditions of annexation. . . .
>
> The standard provided for the court in determining the question of annexation is extremely broad. "The court shall determine the necessity for and the expediency of annexation considering the best interests of the county and city or town, the best interests, services to be rendered and need of the area to be annexed, and the best interests of the remaining portion of the county."[89]
>
> Consent of the residents is no part of the Virginia system. Over the years, by statute and case law, that state has developed numerous protective devices to secure the best interests of all who are involved in the annexation. However, North Carolina, which also has annexation without consent of either the electors or the property owners, has, by statute, provided even more definite standards. North Carolina also makes use of the courts. As Graham says, "The North Carolina statute provides for an appeal from annexation by petition of any property owner in the annexed territory to the superior of the county. The court can remand the proceedings to the municipality with orders to amend or to comply with procedural requirements of the statute. Failure of the municipality to comply within three months renders the annexation proceeding void. Further appeal is allowed to the Supreme Court."[90]

The following is the National League of Cities statement of the pros and cons of judicial determination in annexation proceedings:

> Several advantages are claimed for the judicial determination method of effecting boundary changes. Because the annexation proceedings are heard by a court, the degree of political influence that might be exercised is considered to be less than that which might be brought to bear on the decision under other methods. It is felt that the facts and figures will be determined judiciously rather than politically. A second advantage is that in a court proceeding the "issue has been joined" for

resolution on the basis of the standards of criteria established by the state legislature and is not decided by constituencies voting on the question with their own self-interests the primary determinant. Because this method of boundary expansion is conducted by the courts, it is assumed that there will be an objective and impartial decision; the likelihood that biases and prejudices will be the basis for the decision is reduced. Another advantage of the judicial determination method is that unquestionably there will be an opportunity for a fair hearing of both sides of the issue. The parties to any dispute will have their day in court.

There are, of course, some disadvantages to the judicial determination procedure. The courts may not be qualified to determine and weigh the political and economic factors inherent in almost all boundary extension activities. Most important, court procedures are frequently, and by nature, lengthy and laborious. Court calendars become clogged, interested parties resort to every possible kind of delaying tactic, witnesses disappear, and appeals are conducted. A matter which should be resolved immediately is resolved ultimately.[91]

North Carolina permits unilateral municipal annexation as to some municipalities, subject to the standards and court review referred to above. This system has the great advantage of placing in the hands of those most familiar with urban problems an opportunity to seek a remedy without the delays too frequently associated with other systems. The city is given the initiative so that it can attack the problem on an orderly basis.

The main disadvantage is that the power, without proper safeguards, may be used to annex only highly developed areas producing taxes adequate to meet the added costs to the city. Deteriorated areas may be ignored with the result that they deteriorate further. Cities may compete for territory. Many of the advantages and disadvantages of municipal determination of annexation are illustrated in the experience under Texas statutes.[92]

The relationship of laws governing the incorporation of municipalities and the annexation law is close, and even crucial, in developing urban areas. A liberal incorporation law enables fringe communities to ring a core city and block its growth, multiply fragmentation of local governments, etc. Therefore these laws must be considered together in constitution-making legislating. However, incorporation is not within the scope of this report.[93]

Notes to Chapter 5

1. Frank Sengstock, *Annexation: A Solution to the Metropolitan Area Problem*, Legislative Research Center, University of Michigan Law School, 1960, p. 1.
2. *Ibid.*, p. 3. Quoting Cottrell, "Problems of Local Government Reorganization," 2 *Western Pol. Q.* 599, 601 (1949).
3. Jefferson B. Fordham, *Local Government Law*, New York, 1949, p. 247.
4. *Alternative Approaches to Governmental Reorganization in Metropolitan Areas*, 1962, pp. 63–65.
5. See for example, *Indiana Township Line Alteration Case*, 373 Pa. 319 (1953).
6. Department of Urban Studies, National League of Cities, *Adjusting Municipal Boundaries* (1966) p. 4.

7. Harrison, "The Law of Annexation and Metropolitan Government in Pittsburgh," 5 *Duq. U. L. Rev.* 353. 371 (1967).
8. 74 Pa. Super. 275, 278 (1920).
9. Pennsylvania Constitution, Art. III, Section 7(2).
10. 212 Pa. 533 (1905).
11. 217 Pa. 227 (1907).
12. Harrison, *op. cit. supra* note 2 at pp. 368–369.
13. *Pennsylvania Local Government,* Pa. Stat. Ann. tit, 53 Secs, 1-3500 p. 43 (1957).
14. 416 Pa. 163, (1964).
15. 208 Pa. Super. 62 (1966).
16. Data relative to earlier annexation experiences in Pennsylvania can be found in Lee C. Moore, *Report on Annexations by Pennsylvania Local Governments* (1940–1948) and *Progress Report on Survey of Annexations by Pennsylvania Local Governments* (1940–1948).
17. Data relative to annexations in Pennsylvania were obtained from the Commonwealth's Department of Community Affairs.
18. Information relative to national annexation activity was compiled from International City Managers Association, *The Municipal Year Book*—1967, pp. 71–73.
19. Florida Constitution, Art. 8, Sections 3 and 8.
20. Georgia Constitution, Art. 1, Sections 2–401.
21. *Ibid.* Art. 3, Sec. 2-1915.
22. Illinois Constitution, Art. 4, Section 34.
23. Louisiana Constitution, Art. 14, Section 3 (a). The Florida Constitution contains a similar provision relating to Dade County, (Art. VIII, Section III). Tennessee's Constitution (Amendment 8) also authorizes city-county consolidation upon approval of the affected electorate.
24. Missouri Constitution, Art. 6, Section 30 (a).
25. *Ibid.* Art. 6, Section 18 (a).
26. *Ibid.* Art. 6, Section 17.
27. Montana Constitution, Art. XVI, Section 7.
28. Kansas Constitution, Art. XII, Section 45 (a), The Tennessee Constitution (Amendment 7) contains similar language.
29. Ohio Constitution, Art. X, Section 1.
30. Oklahoma Constitution, Art. 18, Section 3 (a).
31. *Barton v. Stuckey,* 121 Oklahoma 226, 248 Pac. 592 (1926).
32. Washington Constitution, Art. 11, Section 10.
33. *State v. Warner,* 4 Wash. 773, 31 Pac. 25 (1892). *Contra, City of Westport v. Kansas City,* 103 Mo. 141, 15 S.W. 68 (1891).
34. Dept. of Urban Studies, National League of Cities, *Adjusting Municipal Boundaries, Law and Practice* (1966) p. 333. Most home rule states hold that annexation is a matter of statewide concern to be regulated by general law. See cases cited in Winters, *State Constitutional Limitations on Solution of Metropolitan Area Problems,* note 176, p. 35.
35. Texas Constitution, Art. 11, Section 5.
36. *State ex rel. Wayland v. Vincent,* 217 S.W. 402 (Tex. Civ. App. 1920) affirmed 235 S.W. 1084, and *Ex parti Norton,* 113 Cr. R. 306, 21 S.W. 2d 663 (1929).
37. Vernon Rev. Civ. Stats. Tex. tit. 28, Art. 1175.
38. Alaska Constitution, Art. X, Section 12. The States of California and Minnesota also have boundary commissions. These were created by statute.
39. *Fairview Public Utility District Number One v. City of Anchorage,* 368 p. 2d 540 (Alaska 1962). App. dismissed and cert. den. 371 U.S. 5 (1962).
40. *Ibid.* at p. 543.
41. Jefferson B. Fordham, *Model Constitutional Provisions for Municipal Home* Rule, 1953, p. 13.
42. *Ibid.*, p. 14.
43. National Municipal League, *Model State Constitution,* Sixth Edition, 1963, p. 15.
44. *Ibid.*, p. 95.
45. Advisory Commission on Intergovernmental Relations, *Governmental Structure, Organization, and Planning in Metropolitan Areas.* Washington, 1961, p. 21. Although the Commission has not developed a "model" constitutional provision, it has proposed a statute for

adoption by the several states. The recommended statute is patterned after the North Carolina law providing for unilateral annexation. See: *1967 State Legislative Program of the Advisory Commission on Intergovernmental Relations*, pp. 459–474.

46. Committee for Economic Development, *Modernizing Local Government*. New York 1966, p. 61. The Committee's Report does not specifically suggest that the recommendation be made a part of a state's constitution.
47. *Ibid.* pp. 41–45.
48. *Interim Report of the Constitutional Convention Commission*, Maryland, 1967, p. 20.
49. *Ibid.*, p. 18.
50. Temporary State Commission on the Constitutional Convention, *Local Government*, 1967, pp. 42–43.
51. State of New York, The Temporary Commission on the Revision and Simplification of the Constitution, *First Steps Toward A Modern Constitution*, 1959, p. 17.
52. The Sproul Commission, *Report*, 1920, p. 325. The commentary to this proposed section noted that, "This is entirely a new matter recommended to be adopted to prevent the establishment of a city or borough, or the change of a city's or borough's boundaries, without the consent of those most affected." *Ibid.*, p. 325.
53. The Woodside Commission, *Report*, 1959, p. 50.
54. The Scranton Commission, *Report*, 1964, p. 69.
55. The Earle Commission, *Report*, 1935.
56. The Sproul Commission, op. cit., *Report*, 1920, pp. 68–69.
57. Testimony before Local Government Sub-Committee, Hearings, July 20, 1967. The League's prepared statement is entitled, "A Modern Framework of Local Government."
58. See prepared statement by William A. Schnader, Local Government Sub-Committee, July 20, 1967. The Bar Association's proposal was first set forth in its publication, "A Revised Constitution for Pennsylvania" ("Project Constitution"), *Pennsylvania Bar Association Quarterly*, XXXIV, January, 1963, pp. 213–216.
59. Statement by Mrs. Gustave Ehrenberg, Sub-Committee on Local Government Hearings, July 27, 1967.
60. Statement by Mr. Herbert M. Parker, Jr., Sub-Committee on Local Government Hearings, July 27, 1967.
61. Statement by Philip A. Kalodner, Local Government Sub-Committee Hearings, July 27, 1967.
62. "Statement on the Provisions on Local Government in the Pennsylvania Constitution," Local Government Sub-Committee Hearings, July 20, 1967.
63. Testimony of Robert F. Steadman, Local Government Sub-Committee Hearings, July 20, 1967.
64. "Local Government Testimony," presented by Mr. Sam M. McCune, Executive Director, Local Government Sub-Committee Hearings, July 27, 1967.
65. Testimony by Mr. Fred E. Hershey, Local Government Sub-Committee Hearings, July 27, 1967.
66. *State ex rel. Pan American Production Co. v. Texas City*, 303 S.W. 2d 780 (Tex. 1957), appeal dismissed per curiam, 355 U.S. 603 (1958); *Fairview Public Utility District Number One v. City of Anchorage*, 368 P. 2d 540 (Alaska, 1962) appeal dismissed and cert. den., 371 U.S. 5 (1962).
67. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).
68. Sengstock, Annexation: *A Solution to the Metropolitan Area Problem* (1960), p. 17.
69. 2 *Harvard Journal on Legislation*, 239 (1965).
70. *Ibid.*, p. 242.
71. *Ibid.*, pp. 243–244.
72. Many authorities and organizations have published lists of basic principles to be followed in drafting an annexation statute. Standards for determining such issues or whether territory is inhabited or uninhabited, what is sufficient protest, what is the priority in competing annexations, etc. have been set forth in detail. See for example National League of Cities, *Adjusting Municipal Boundaries* (1966), Chapter 5, "A Study of Recent Amendments to California Annexation Laws," 11 *U.C.L.A. L. Rev.* 41 (1963); "An Act to Establish Standards and Procedures for Municipal Boundary Adjustment," 2 *Harvard Journal on Legislation,*

239 (1965); and Ohio Legislative Service Comm. *Staff Research Report No. 69*, "Municipal Incorporation and Annexation in Ohio" (1964).

73. Wisconsin Laws, 1957, Chapter 676, at 1005.
74. Department of Urban Affairs, National League of Cities, *Adjusting Municipal Boundaries*, (1966), p. 7.
75. Winters, *State Constitution Limitations on Solutions of Metropolitan Area Problems*, p. 128.
76. *Phillips v. City of Atlanta*, 210 Ga. 72, 77 S.E. 2d 723 (1953).
77. *DuPre v. City of Marietta*, 213 Ga. 403, 99 S.E. 2d 156 (1957).
78. Referendum provisions were upheld in older cases on the theory that legislative power was not delegated, but its exercise was merely made dependent upon the condition of public approval. See the cases cited in Winters, *op. cit.*, note 23 at p. 128 in notes 597 and 598.
79. Minnesota Laws c. 686 (1959), Minn. Stat, Ann. Sec. 414.01 *et seq.* See also National League of Cities, *op. cit.*, note 9, pp. 189-200.
80. As to the referendum requirement, Martin Redish (in Municipal Boundary Commission Study for Local Government Conference, p. 11) states, "the existence of this voting requirement, according to the League of Minnesota Municipalities, has effectively stopped the commission from using its initiative to achieve some type of order in establishing municipal boundaries in many areas. There has been no affirmative vote on annexation since 1963. Many interested experts agree that 'no meaningful large planned annexations can be accomplished . . . while the veto provision remains in the law.'"
81. *Ibid.* p. 6.
82. Mandelker, "Municipal Incorporation and Annexation: Recent Legislative Trends," 21 *Ohio St., 2 J. 285 at 302 (1960).*
83. Wis. Stat. Sec. 66.02 (11) (b) (1963).
84. Wis. Stat. Sec. 66. 021 (11) (a) (1963).
85. Johnson, "The Wisconsin Experience with State-Level Review of Municipal Incorporations, Consolidations, and Annexations," *1965* Wis. L. Rev. 462 at 475.
86. Department of Urban Affairs, National League of Cities, *op cit.*, note 9, p. 99.
87. *Ibid.* p. 20.
88. 1961 *Ill. L. Forum* 452 at 461.
89. Va. Code Secs. 15-152.3, .4 (Repl. 1956, Supp. 1960).
90. Graham, *op. cit.* note 19 at p. 465. See N.C. Gen. Stat. Ann. Secs. 160-453.1 to .24 (supp. 1959).
91. Department of Urban Affairs, National League of Cities, *op. cit.* note 9, p. 18.
92. "Texas Municipal Annexation Act," 29 *Tex. B.J.* 165 (1966), "Analysis of Annexation Power of Texas Home Rule Cities in View of a Good Annexation Law Proposal by the American Municipal Association," 39 *Tex. L. Rev.* 458 (1961).
93. See for example, Bueche, Incorporation Laws, *One Aspect of the Urban Problem*, Bur. of Govt. Research and Service, University of Colorado (1963).

ANNEXES

Testimony at Public Hearings and Other Statements

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Statement of Philip P. Kalodner, Vice-Chairman and Chairman, State Affairs Committee, Southeastern Pennsylvania Chapter, Americans for Democratic Action, Before Local Government Committee of the Preparatory Committee for the Constitutional Convention

The utterly antiquated and hopelessly inefficient structure of county and local government in Pennsylvania is hardly a matter for much debate or disagreement. Without a drastic reorganization it will forever remain impossible to resolve such growing regional problems as air and water pollution, storm and sewer drainage, transportation, conservation and recreational development and even such everyday mundane problems as providing adequate trash disposal and adequate police protection.

Many Pennsylvania Counties are far too small—and their three headed governmental structure with its wasteful appendages of elected row officers and inefficient patronage employees subject to removal in the winds of political change makes effective government impossible. Pennsylvania's local government is even less rational and intelligible—with many of its units too small, with township governments designed to serve rural areas attempting to serve urban areas and with enough different kinds of local government—cities, townships and boroughs—to make the ordinary citizen's head spin.

And finally the basic Pennsylvania concept of separation of the local government and school board, whatever sense its origins may have made, results in two different taxing agencies neither of whom adequately considers the other's needs and whose sole cooperation is often the use of one tax bill to be sent to the residents.

The first step in any reform must be the elimination of those constitutional shackles which currently make any meaningful reform impossible.

Certainly such provisions as the denomination of county row officials as constitutional officers and such requirements as a period of residency for the holding of county office and maintenance of specific county offices in the county seat should be eliminated.

From the point of view of constitutional theory the simplest solution would be merely to provide for the creation of such county and local government as the Legislature might provide.

However, as a practical matter, no realistic student of Pennsylvania politics could conclude that such a system of legislative option would lead to

anything else except the statutory enactment of the current system with such few changes, if any, as to be meaningless in the solution of the over-all problem.

We therefore recommend that the Constitution provide specifically for the structure of county and local government and provide a home rule option for such governments within certain carefully delineated boundaries.

Specifically we recommend the following provisions:

(1) Counties shall be created by the Legislature and may be divided by it from time to time with the approval of the residents affected except that no county shall be created which shall contain at the time of its creation fewer than 50,000 residents.

(2) That counties shall be governed by a single elected chief executive and a vice-chief executive and by a legislative council of one or more elected representatives of each municipality which forms a part of such county and as many at-large representatives as the Legislature may determine. Such at-large representation should incorporate the requirement of minority representation.

(3) That there shall be elected in each county a District Attorney and a Controller and that all other county officials shall be appointed by the chief executive of the county.

(4) That there shall be created such local governmental units within each county and in such manner as the Legislature may determine, except that no local governmental unit shall govern fewer than 25,000 residents; and each such local government shall consist of an elected chief executive who shall be a full time executive and such local elected council members as shall be provided by law, such council members to be elected from districts and at-large with minority at-large representation guaranteed.

(5) All functions of county and local government, including the operation of the schools, shall be the responsibility of the county or local governments as the Legislature may determine, provided however, that should the majority of the voters of any county and of all of the local governmental units therein so determine, any or all local governmental functions may be assigned to the county government and if the voters so determine, local governmental units may be abolished.

(6) The voters of each local government and each county government may modify by referendum the form of their respective governments provided that such modified governments incorporate the principles of an elected chief executive and an elected council as set forth in this Constitution; and the Legislature is empowered to recognize by statute such existing city governments as do so comply as having already exercised such option in whole or in part. (By virtue of this provision, the government of Pennsylvania's major cities may be legislatively recognized as having exercised such option.)

(7) All employees and officials of county and local government shall be

salaried and all fees collected by them shall be paid over to the governmental unit by which they are employed.

(8) All employees, except for those legislatively determined to hold policy making positions, shall be employed on merit after competitive examination, shall not be removed except for cause and shall neither be rewarded nor punished for any political activity in which they engage.

Such provisions as above outlined would lead to the creation of the kind of local governmental units which could efficiently function.

Significantly, the size of the unit which is specified as the minimum for local government is smaller than the size which has already been determined to be a minimum for a properly functioning school district, and the boundary lines of such school district might be in many cases appropriate boundary lines for local governmental units. As for the school administration function, the Legislature could if it deemed wise provide for a school board appointed by the local or county chief executive, but the responsibility would remain his responsibility and that of the local or county council for its administration and its budget, in much the same way as the responsibility for the actions of the Philadelphia School Board is currently placed in the Mayor and the City Council of Philadelphia.

Admittedly, the county and local governmental structure here provided is a radical departure from Pennsylvania's current system. Admittedly also, the actual drafting of the constitutional provisions incorporating such a structure would require substantially more refinement than is here provided.

But any serious student of Pennsylvania's local government must be aware that nothing less than such radical reform will permit Pennsylvania's local government to begin to function effectively to solve the problems of the Twentieth Century.

County Treasurers' Association
Commonwealth of Pennsylvania

July 20th, 1967

Mr. John W. Ingram
Executive Director
The Preparatory Committee
Commonwealth of Pennsylvania
Constitutional Convention

Dear Mr. Ingram:

On behalf of the County Treasurers' Association, Commonwealth of Pennsylvania, we are submitting the following resolutions for the consideration of the forthcoming Constitutional Convention:

WHEREAS, county government of the Commonwealth of Pennsylvania has been an important part of the fabric of local government in our state for more than a century and,

WHEREAS, this system of government has been both efficient and effective and a continuing opportunity for the participation of the electorate in the selection of those who are to serve in official capacity, now

BE IT RESOLVED by the County Treasurers' Association that this system of government, at the local level, proven by time and accepted by the peoples of this Commonwealth as a means of active participation in their governmental processes, be retained

and FURTHER that the office of the County Treasurer be made an office with the privilege granted to the elected office holder of succession in office, as is the case in all other elected county offices and that this be presented as a constitutional amendment by the forthcoming Constitutional Convention.

Attest:

(Mrs.) Marie E. Mayer, President
Thomas R. Joyce, First Vice-President
Donald B. Hoffman, Secretary-Treasurer

Statement to the Pennsylvania Constitutional Convention Preparatory Committee, Task Force Hearing on Local Government, July 1967, by The League of Women Voters of Pennsylvania

I am speaking on behalf of the League of Women Voters of Pennsylvania. The League in Pennsylvania, with almost 7,000 members organized in 56 local Leagues, has had an interest in constitutional revision that predates the activity of most other citizen organizations in the state. Even before formal study of the issues involved in constitutional reform was begun by the League of Women Voters in 1953, statewide studies on other governmental issues were found to have constitutional complications or frustrations. Local Leagues studying local or municipal problems repeatedly discovered that remedies had to be sought at the state level, either through legislative action or constitutional change. All the Leagues in Pennsylvania in the spring of 1953 undertook a concerted study of changes needed in the Commonwealth's basic document. Members have voted at every Pennsylvania League of Women Voters Convention since 1953 to have constitutional revision as our first subject for state study and action.

In the course of those fourteen years specific constitutional questions and articles were considered by the League of Women Voters. League members have agreed on answers to a variety of questions ranging from advocacy of a state civil service provision in the Constitution to methods of achieving constitutional change. A few of the revisions proposed by the League of Women Voters have already been voted into law in the past two years by amendment.

At today's hearing we wish to speak to Articles 13, 14, and 15 of Pennsylvania's Constitution, the sections concerning county and municipal government. The League of Women Voters advocates more self-determination for Pennsylvania's local government. We should like to see greater choice among the forms of government permitted to counties and to municipal subdivisions.

At present home rule for local government seems as often to need legislative action as it does constitutional change. Even where the Constitution already gives permission, our legislators have been reluctant over the years to delegate to cities and townships power to cope effectively with present day difficulties or to give permission to experiment creatively with forms of local government in ways to help them solve their numerous problems.

During the recent campaign to pass the referendum calling for a limited constitutional convention, it seemed curious that one of the arguments used by those opposing the convention call was that a convention would be a threat to local self-government and home rule. The temptation was to respond, "What home rule?" Some of those most vociferous on behalf of what they called local home rule were elected officials whose power to govern is severely limited by detailed codes prescribing how detour signs must be used on streets under repair and how many meetings must be held by appointed boards and commissions.

The League of Women Voters supports measures to permit all local governments to frame their own charters, subject to voter approval, and we believe that there should be optional forms of county government available. We believe that an elective governing body should be a feature of every optional plan.

In general, we support the language of the Pennsylvania Bar Association proposals for Articles 13, 14, and 15, plus sections of the present Article 9. However, we believe the drafted passages may not be broad enough in their application. The home rule provisions in the proposed local government Article apply only to cities and boroughs, which seems to exclude great numbers of local governments now existing in the form of first and second class townships. We suggest that consideration be given to a rephrasing of Section 5 of the PBA Local Government Article so that wherever the words "cities and boroughs" occur, the term "political subdivisions" be used instead.

At this time in the political development of Pennsylvania and the United States there appears to be much ferment in discussion about local government. Dissatisfaction with fragmented, ineffective, inadequately funded local governments is often heard. I mention to you only one of many recent publications on this topic, "Modernizing Local Government" by the Committee for Economic Development. In this connection we should like to raise a question. Would it be wise to explore ways to frame this portion of Pennsylvania's Constitution broadly enough that we don't slam the door to the future? None of us can second guess the future, but we can do our best to see that change is not blocked through built-in rigidity. If it takes as long to change the new document that we shall have after next April as it has taken to achieve major revisions in the 1874 Constitution, we should be very cautious indeed about how we incorporate legislative detail into what should be instead a general statement of governmental principle. Especially in the local government Article is it desirable to freeze present forms or a limited number of new forms into the Constitution at a time when great flexibility and germinal thinking are needed? Should not our objective instead be to provide the broadest possible framework within which variety and creative change are still possible?

Thank you for allowing us to present our views on the local government

provisions of Pennsylvania's Constitution. We hope that among the recommendations the Preparatory Committee will offer to the Constitutional Convention when it meets next winter will be one that the Convention itself or Convention committees hold public hearings on the four constitutional topics assigned by the voters to the Convention for consideration. We suggest that the more citizen involvement there is in the deliberations of the Convention the more the voters of the Commonwealth will feel that the Constitution is truly their document and one deserving their close attention and support.

Local Governments and the Constitution

Proposals for Constitutional Revision by the Pennsylvania Local Government Conference, Presented to the Constitutional Convention Preparatory Committee, July 27, 1967.

Probably no single group has as much to gain or lose in Constitutional Revision in Pennsylvania as do its local governments. Realizing this, the Pennsylvania Local Government Conference, the organization representing all the local governments of the Commonwealth—cities, boroughs, townships, counties and school districts—feels that it is necessary that the Committee and the Convention receive five basic principles for Constitutional Revision which all local governments agree are of paramount importance in revision. Individual associations will undoubtedly be supplementing these with proposals of their own, but we stress that these principles are ones which all local governments in Pennsylvania feel are necessary for a modern framework of local government in our Commonwealth.

Residual Powers for Local Government

Pennsylvania local governments traditionally have been the subject of the judicial principle referred to as "Dillon's Rule." It provides that local governments may exercise powers only specifically granted to them by the state constitution or by legislation. This has often resulted in local government being unable to adapt to change and puts a burden on the legislature and the courts. It is the position of the Conference that the trend toward turning to the state and federal governments by local government is often the result of not being able to meet adequately their responsibility because of the strict interpretation of local government powers brought about by Dillon's Rule and the lack of residual powers.

The Advisory Commission on Intergovernmental Relations supports this principle and it is its wording which is generally followed in the specific recommendation below:

"Cities, boroughs, townships and towns shall have all residual functional powers of government not denied by this constitution or by law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express

denials may be limitations of methods or procedure. Pre-empted powers may be exercised directly by the state or delegated by law to such subdivisions of the state or other units of local government as the legislature may by law determine."

No Constitutional Debt Limits

The Conference believes that Constitutions should be flexible documents and that restrictions which can be easily outdated by changing conditions, such as debt restrictions, are better set by the legislature. Actually, the most effective limits on debt are the realities of the bond market. The Conference recommends that the subject of debt limitations should contain only a general grant of power to the legislature to regulate local government debt.

The Advisory Commission on Intergovernmental Relations suggests the following provision on the subject, which the Conference approves:

"The legislature may pass laws regulating the taxing and borrowing powers of political subdivisions of the Commonwealth."

Removal of Exemptions

One of the great contributors to the "squeeze" on local governments is the present system of property tax exemptions in our Commonwealth. As demands for service and costs increase, local governments are often faced with a decreasing property tax base because of continual extensions of property tax exemptions. This fact has forced local governments to turn to other, less equitable taxes, and to the state and federal government for help. It is not unusual for one-third of the property in Pennsylvania municipalities to be tax exempt.

The Conference feels that all property owners should pay their *fair share* for local services, and therefore proposes the elimination of all exemptions on property, including governmental and authority exemptions. The Conference supports this in order to eliminate loop-holes through which those interested in not bearing their fair share can obtain exemptions. The Conference feels that only through this complete prohibition can the costs of providing services to property owners through property taxation be equitably distributed.

The Conference realizes that the uniformity clause of Section 1, Article IX, cannot be considered at the Convention, but wonders if an addition to that clause may not be feasible. It suggests the following wording be added to Section 1, Article IX:

"All taxes shall be uniform upon the same class of subjects, within the territorial limit of the authority levying the tax, and shall be levied and collected under general laws; *such general laws shall provide for no tax exemptions on property*, including all property owned or leased by the Commonwealth, its agencies, and its political subdivisions."

Laws on Wages, Hours and Working Conditions of Local Employees

In every session of the Pennsylvania General Assembly there are hundreds of bills introduced and dozens of bills passed pertaining to wages, hours and other working conditions of local government employees. The Local Government Conference feels that this type of legislation is detrimental to the orderly conduct of local government by the people elected to do this job—councilmen, supervisors, commissioners. These are the men who know local conditions, who are responsible for raising the revenue to provide for salaries, who must allocate limited resources to the best possible use for all. If the power to regulate the personnel policies of their own employees is taken away from the elected local official, what remains?

The Conference also feels that such legislation is detrimental to the General Assembly. A disproportionate amount of time and energy is spent by the body on these local problems; special interest group pressures in this area of legislation are often extreme and wearing on the individual legislator; time and effort of local officials are wasted in efforts to combat passage of this type of bill.

Often this type of legislation does not serve the best interests of those proposing it. Extreme pension demands when overstrained pension funds are involved is an example of this.

In summary, the Conference believes that the best interests of all concerned would be served if local governments were given the exclusive right of passage of laws concerning the wages, hours and working conditions of its own employees.

"Local Governments shall have the exclusive power to provide for the wages, hours and conditions of employment of local employees."

Optional Charters for Cities and Boroughs

The Conference feels that it is important to provide limited home rule government for urban municipalities. Cities and boroughs differ greatly in Pennsylvania; they differ in size, population, economic base, wealth, etc. It is difficult to impose successfully one or two forms of government on all.

In the last half of the twentieth century, and for years after, the Conference feels that flexibility in local government structure may be the most important element in a municipality's ability to cope with change and the increased role it will be called on to play in serving its citizenry. It is the position of the Conference that limited home rule charter power through the use of optional forms of government provided by the legislature can be applied to all municipalities.

The Conference proposal generally follows the proposal of the Woodside Commission with the exception that it mandates legislative action by use of the word "shall"; under the optional "may" in the current constitutional pro-

vision on the subject, it took the legislature more than 25 years to provide optional charters for cities.

"The General Assembly shall, by general law, provide optional plans of municipal organizations and government for cities and boroughs under which an authorized optional plan may be adopted or abandoned by majority vote of the qualified voters of the city or borough voting thereon."

Statement on the Provisions on Local Government in the Pennsylvania Constitution by A Modern Constitution for Pennsylvania, Incorporated, Harrisburg, Pennsylvania, July 20, 1967

To the Members of the Preparatory Committee for the Pennsylvania Constitutional Convention of 1967

Gentlemen:

A Modern Constitution for Pennsylvania, Inc., endorses the proposals made by the Pennsylvania Bar Association for consolidating and amending Articles XIII, XIV and XV of the Pennsylvania Constitution, providing for all Local Government in the Commonwealth.

However, we wish also to report our findings which indicate that further revision of the Local Government Articles beyond that proposed by the Bar Association would seem to be in the public interest.

First, let us address ourselves to the Bar Association proposals.

1. They permit, by the joint exercise of the General Assembly's authority and of local Home Rule, the establishment and adoption of various forms of government for counties, cities and boroughs.

2. They require that, whenever a change of government is considered by any county, one alternative to be considered by its voters must always be the present form of government, i.e., with thirteen elected officials, including a sheriff, a coroner, a prothonotary, a register of wills, a recorder of deeds, three commissioners, a treasurer, a surveyor, an auditor or controller, a clerk of the courts, and a district attorney.

3. They provide for the Philadelphia city government to perform all county government functions, abolish all county offices in Philadelphia, and otherwise affirm the provisions of the Philadelphia City Charter.

4. They also extend to Philadelphia the same limitations on debt, and on the increase in debt, which were provided for the other municipalities of the Commonwealth under a Constitutional amendment approved by the voters on May 17, 1966.

These proposals are all obviously designed to make county, city and borough government throughout the state somewhat more flexible, and to promote a modified sort of Home Rule.

However, in the opinion of many, the Convention should not limit itself

to such minimal recommendations. We have studied other areas which the Convention may profitably explore.

The great multiplicity of local governments in Pennsylvania is one such area.

Pennsylvania has 6,000 local governments—counties, cities, boroughs, townships, school districts, etc. Only one other state has so many—Illinois. Comparable contiguous states are New York, with 3,802, and Ohio, with 3,359. Even California, with substantially more area and population, has only 4,022. We have 53 more local governments in Allegheny County, alone, than there are in all Alaska, Hawaii, Rhode Island and the District of Columbia.

There is reason to question the need for so many overlapping layers of government to serve the needs of Pennsylvania's citizens in the society we know today and can expect tomorrow. The duplication of facilities and services, and the lack of progress in sharing facilities and services, have obviously resulted in a proliferation of elective and appointive jobs. This, in turn, adversely affects the efficiency of local governments, and inevitably increases its cost disproportionately to its service.

The costs of Pennsylvania's 6,000 local governments, for the last reported year, were about $2,283,000,000—almost 50% more than the revenues of the Commonwealth, itself, and larger than the revenues of any single state government in the nation, except California. They were more than 7% of the total personal income of all Pennsylvanians. Studies also show that they are rising faster than the national average. Federal revenues rose only 76%, from 1955 to 1965; revenues of all local governments in the nation rose 79%; revenues of the Pennsylvania's local governments rose 98%.

In the face of continually increasing costs of government on the state and Federal levels, many authorities believe that the only area where government expenses can be effectively held down is the local level. But this is possible only where the local government effectiveness can be improved.

If this can only be done by reducing the number of local governments in Pennsylvania, many authorities maintain that this is the time to do it. We now have before us an unprecedented opportunity to propose changes to the constitutional provisions on local government. They insist it should be used to the fullest.

A Modern Constitution for Pennsylvania, Inc., agrees with them in principle, and therefore recommends that, in addition to adopting the excellent proposals of the Pennsylvania Bar Association, the convention should take steps to encourage Home Rule action to reduce the excessive number of local governments in Pennsylvania.

Such steps might include:

1. Changing the General Assembly's *right* of providing optional forms of government for counties, cities and boroughs, to a *requirement* that they provide such options.

2. Providing State cooperation to local governments who wish to combine facilities or services.
3. Requiring the Legislature to establish and maintain minimum standards for local governments, based on population, area, fiscal capacity, growth rate or other determinants, and to encourage the voluntary consolidation of the less effective local units of government.
4. Providing State aid to local governments whose consolidation has the approval of their voters, but where the equitable disposition of their assets and debts poses special problems.

The direction of such steps must always be toward better government at lower cost, always with due regard for the principles of Home Rule.

A Modern Constitution for Pennsylvania, Inc.

Richard C. Bond, President
Robert Sidman, Executive Director

Proposal of the Pennsylvania Bar Association Relative to Local Government, Submitted to the Preparatory Committee for the Constitutional Convention, Authorized by the Voters of Pennsylvania Under Act No. 2 of the 1967 Session

Article—

LOCAL GOVERNMENT

A. *Counties*

Section 1. **New Counties**—No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

(Constitution of 1874, Article XIII, Section 1)

Section 2. **Optional Plans of County Government**—The General Assembly shall provide by general law for the government of counties. It may provide by law applicable to all classes of counties or to a particular class optional plans of county organization and government which may be adopted by a majority of the qualified electors of a county voting thereon, and also, if the plan involves the elimination of existing political subdivisions, by a majority of the qualified electors voting thereon in each of a majority of the political subdivisions which would be eliminated. One option shall be the form of county government in effect when this article becomes effective, which option may be amended by the General Assembly from time to time except that the county officers named in Article XIV, Section 1 of the Constitution of 1874 shall always be retained in this option. Under any plan, the governing body shall be elective.

(Pennsylvania Bar Association's Proposal Modifying a Proposal by the Woodside Commission)

Section 3. **Elective County Officers**—Elective county officers shall be chosen at municipal elections and shall take office on the first Monday of January next after their election. They shall hold office until their succes-

sors have qualified. Elective county officers shall be citizens of the Commonwealth and qualified electors of the county.

(Pennsylvania Bar Association)

Section 4. **County Government Abolished in Philadelphia**—

(a) In Philadelphia all county offices are abolished. The city shall perform all functions of county government within its area.

(b) Local and special laws with respect to powers granted to the city of Philadelphia shall be valid notwithstanding the provisions of this Constitution relating to local and special legislation.

(c) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia.

(d) The city of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the county of Philadelphia.

(e) All officers performing functions of county government shall be officers of the city of Philadelphia, until otherwise provided by the city of Philadelphia through amendment to the Philadelphia Home Rule Charter, shall continue to perform their duties and be elected, appointed, compensated and organized in the manner now in effect.

(Pennsylvania Bar Association's Proposal to Amend Article XIV, Section 8 of the Constitution of 1874, as Amended, November 6, 1951)

B. *Cities and Boroughs*

Section 5. **Incorporation, Optional Plans, Home Rule**—

(a) The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved.

(b) It may provide optional plans of municipal organization and government which may be adopted or repealed by a majority vote of the qualified electors of the city or borough voting thereon.

(c) Cities or cities of any class and boroughs may be given the right and power to adopt, amend or repeal their own home rule charters and to exercise the powers and authority of local self-government subject, however, to such restrictions, limitations and regulations as may be imposed by the General Assembly.

(Pennsylvania Bar Association)

C. *Municipal Finance*

Section 6. **Municipalities Not to Become Stockholders in Corporations**—No county, city, borough, incorporated town, township, school district or other political subdivision shall become a stockholder in any company, as-

sociation or corporation, or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.

(Pennsylvania Bar Association's Proposal to Amend Article IX, Section 7 of the Constitution of 1874)

Section 7. **Municipal Debt**—(a) The debt of any county, city, borough, township, school district, or other municipality or incorporated district, shall never exceed fifteen per cent upon the assessed value of the taxable property therein, nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five per cent upon such assessed valuation of property without the consent of the electors thereof at a public election in such manner as shall be provided by law.

(b) The General Assembly may impose additional restrictions and limitations uniform on each type or class of political subdivision on the amount of debt that may be created, either with or without the consent of the electors, and may prescribe the manner in which debt may be created. The General Assembly may provide for the apportionment among political subdivisions of borrowing power within general limitations.

(c) In ascertaining the aggregate indebtedness at any one time of any political subdivision, there shall be deducted obligations payable solely from the net operating revenues from designated projects and also obligations incurred for the acquisition of revenue producing public works or public utilities which may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon.

(Pennsylvania Bar Association's Proposal to Amend Article IX, Section 8 of the Constitution of 1874, as last Amended on May 17, 1966)

Section 8. **Tax to Liquidate Municipal Debts**—Unless otherwise provided by law, any county, city, borough, incorporated town, township, school district or other political subdivision incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

(Pennsylvania Bar Association's Proposal to Amend Article IX, Section 10 of the Constitution of 1874)

Repealer

Articles XIII, XIV, and XV of the Constitution of 1874 are hereby repealed.

Statement of William A. Schnader
(Pennsylvania Bar Association)

The article on Local Government which we are offering embraces sections 7, 8 and 10 of Article IX and Articles XIII, XIV and XV of the Constitution of 1874.

It provides a form of modified home rule for counties and unshackles counties from the requirement of the present Constitution that, regardless of their size or their need, they must each have 13 named county officers.

Modified home rule is effected by Section 2 which permits the Legislature to provide optional plans of county organization and government which may be adopted by a majority of the qualified electors of a county voting thereon. If a particular plan involves the elimination of existing political subdivisions it must also be adopted by a majority of the qualified electors voting thereon in each of a majority of the political subdivisions which would be eliminated. There is a specific provision that one option shall be a form of government in which the 13 officers presently named in Article XIV, Section 1 shall be retained.

This article has been under attack in the Legislature by a powerful lobby of county officers who seem to feel that once elected to a particular county office, the office is theirs and cannot be touched by the voters of Pennsylvania. This obviously is not true. Some years ago, two Legislatures proposed, and the people of Pennsylvania adopted, an amendment eliminating all county officers in Philadelphia. Philadelphia has benefited greatly as a result of the passage of this amendment and there are many other counties in the State which would undoubtedly benefit by being free to have their voters decide whether the county needs all of the 13 named officers or can dispense with some of them.

It was not the Pennsylvania Bar Association which proposed this change. It was the Woodside Commission and the Woodside Commission's proposal has been approved, not only by the Bar Association but by the Scranton Commission as well.

In 1966 the people adopted a constitutional amendment increasing the borrowing capacities of all political subdivisions in Pennsylvania, except Philadelphia. The Bar Association believes that there is no justification for this discrimination and would increase the borrowing capacity of the City of Philadelphia to be the same as that of every other city and political subdivision in the State. The proposed new Section 7 would eliminate this discrimination.

In every instance, except one, the Woodside Commission recommended that the provisions relating to local government in the Constitution of 1874 be either amended or repealed just as the Pennsylvania Bar Association has recommended. The one instance in which the Bar Association is recommending an amendment where the Woodside Commission recommended no change is in what is Article IX, Section 10 of the present Constitution which would become Section 8 of the Article on Local Government. This is, of course, not to say that in every instance the Bar Association's final recommendation uses language identical with that recommended by the Woodside Commission. However, in substance, the recommendations are quite similar.

As presented to you the Bar Association's proposal on Local Government would give to the Legislature the right to provide optional plans of municipal organization and government for any city or borough voting thereon, and would permit the Legislature to give to any city or class of cities and to boroughs the right to adopt, amend or repeal their own home rule charters, subject, however, to such restrictions and regulations as might be imposed by the General Assembly.

We believe that the Constitution need contain no provisions additional to those contained in our proposal to permit the Legislature vastly to improve county, city and borough government in Pennsylvania.

It may be noted that there are no provisions dealing with township government in the proposed Article on Local Government. There are no such provisions in the Constitution today, and both the Bar Association and the Scranton Commission felt that township government, as it exists today, should not be disturbed by new constitutional provisions. This obviously was also the thinking of the Woodside Commission.

Testimony Before the Constitutional Convention Task Force on Local Government: Offered by Pennsylvania Home Builders Association

My name is Herbert M. Packer, Jr., Executive Vice President of the Pennsylvania Home Builders Association, a state-wide trade association representing 2,500 members in the residential construction industry.

With me is J. Scott Calkins of the Harrisburg law firm of Shaffer, Calkins & Balaban, Legal Counsel to our Association.

To give you some brief additional information about our Association, it represents Local Home Builders Associations in the following metropolitan areas of our state:

Allentown-Bethlehem-Easton; Wilkes Barre-Scranton-Hazleton; Chambersburg; Lancaster; York; Gettysburg; Harrisburg; Reading; State College; Sunbury-Selinsgrove-Lewisburg; Altoona; Johnstown-Somerset-Indiana; Washington; Uniontown; Erie; Williamsport; Pittsburgh, and Philadelphia.

We have requested permission to testify today because of our concern for and interest in modern, efficient Local Government.

Our interest is two-fold—first, to assure fiscally sound, highly efficient Local Government, and second to assure that such Local Governments are totally responsive to the needs and desires of their citizens, and to the welfare of the over-all area in which they are geographically located.

Our testimony will touch upon three major areas of concern. The first is political boundaries. The second is Local Government services, and the third is the over-all category of local government control over our industry.

POLITICAL BOUNDARIES

In the area of political boundaries, we often see more heat than light. It seems that during each General Session of the Legislature, the battle recurs. Will the cities win the valiant effort to expand? Will townships of the second class stave off the latest offensive by boroughs and townships of the first class to violate their territorial integrity?

It may sound like one of our modern soap opera plots but it isn't. This is an accurate description of the scene in our State Legislature as local governments annually air their rivalries to the disadvantage of the citizenry.

Despite the bugaboo of "Metro" or "regional" government, and the fear of the megalopolis, the fact remains that something must be done to insure

that while the taxpayer retains his direct voice in government he gets the most efficient form of Local Government possible.

Gentlemen, the day of the "road supervisor" is at an end! If Local Government as we know it today is to survive, it must offer the citizens it serves, both individual and corporate, maximum service at minimum cost.

As we view it, the only possible way to do this is to form stronger and larger units of local government. Such units would have the obvious advantages of geographic size, fiscal soundness through a solid tax base, and adequately trained personnel.

We therefore recommend that Constitutional Convention delegates ease the existing annexation laws to facilitate the formation of such units.

There are those who will suggest that this is a problem for the Legislature to decide.

We don't agree! The battle over the issue is perennial and the forces advocating territorial status quo show no signs of weakening. Their efforts to block streamlined, efficient local government are unending.

We also recommend that the delegates provide these new, financially stronger, more efficient local governmental units with the proper professional personnel and tools with which to do the job we expect of them. Without such help, there is little hope that Pennsylvania can move out of the "dark ages" of antiquated local government and into the "renaissance" of enlightened, efficient, stronger local governing bodies.

LOCAL GOVERNMENT SERVICES

Local government services in which the housing industry is vitally interested are sewage collection and treatment, water treatment and supply, police and fire protection, street maintenance and repair, to name but a few.

The residential construction industry cannot do the job for which it is responsible—that of providing decent housing for all Pennsylvanians at a price they can afford—without such services, nor can those to whom our product, housing, is consigned exist without such services.

Yet, in many areas of our state such services either do not exist at all or are substandard by any modern measurement of quality.

The fault is not that of local government alone, we hasten to add lest we be accused of unjust and unfair criticism. The fact is, however, that this unfortunate situation does exist.

Furthermore, we believe that something can and should be done about the problem by the delegates to the forthcoming Constitutional Convention.

We recommend incorporation of a clause in an appropriate article covering local government which reads, "Local government shall not impair the health, safety and welfare of its citizens through lack or inadequacy of such services as sewage collection and treatment facilities, water treatment and

supply systems, police and fire protection, street maintenance and repair, and lighting."

Such a step would assure the citizens of our Commonwealth the quality and variety of local governmental service they merit and deserve and for which they are asked to pay.

LOCAL GOVERNMENT CONTROL OF THE HOUSING INDUSTRY

Reasonable control of business and industry is necessary and proper.

However, the housing industry has been plagued from time to time and place to place with a unique type of "over control" sometimes described as punitive zoning ordinances, sometimes described as unrealistic subdivision regulations, and sometimes described as ultra stringent planning codes.

Whatever the description, it is an absolute fact that Local Government has been known on occasions to utilize codes as an anti-social weapon, the apparent purpose of which is to keep out housing and people.

If proof is required, take the case of the township within our state which actively sought and successfully persuaded a major industry to locate within its borders. Immediately thereafter, the township fathers jacked up the minimum lot size in an admittedly deliberate attempt to keep out employees of the firm who were looking for low and low-middle income housing near the plant site.

And then there's the story of the township in Delaware County which recently adopted a new subdivision regulation so stringent that building of low or low-middle income housing is an economic impossibility. Confronted with this, the township supervisors replied that, "Our township wants only 'decent' housing within its borders and not 'cheap stuff.' "

And finally, there's the story of the developer who offered a sound subdivision plan to his township supervisors. Confronted with this plan, those supervisors quickly raised minimum lot sizes. The developer ingeniously redesigned his plan to meet the new requirement and, again, the township supervisors acted, this time raising the minimum lot size to four acres. The developer could stand no more. He entered suit. The case went all the way up to the U.S. Supreme Court which, in National Land Co. vs Kohn, threw out the township zoning ordinance as unconstitutional, saying, in effect, that zoning cannot be used as a means of blocking progress. The story might have ended there but it didn't! The same township supervisors called the developer in, proudly announced that the township had a legal fund of $10,000 with which to continue legal actions. They hinted darkly that they'd reduce the minimum lot size a quarter-acre at a time and the developer could sue to his heart's content. The supervisors cheerfully admitted that the developer would win each time and suggested that a compromise could end the issue to everyone's satisfaction if only the developer would accept two

and one-half minimum lot sizes. He surrendered, naturally. It would have been economic suicide to have done otherwise.

The point behind these rather sordid stories of unwarranted abuses of power is that our rewritten Constitution must include provision for uniform and uniformly applied zoning, subdivision and planning codes in order to encourage rather than preclude a healthy rate of residential construction in keeping with modern land usage principles.

We so recommend because we believe that our revised Constitution must clearly and forcefully prohibit capricious and arbitrary restrictions in connection with the use of land.

Another alarming trend becoming even more popular is economic coercion practices upon builders and developers by local government to obtain cost-free park ground, recreational areas and school sites, or cash in lieu therof.

The methodology is quite uncomplicated. A building permit is usually required for each house constructed. No dedication or cash in lieu thereof, no permits!

For this reason, we strongly recommend a Constitutional provision within the articles on Local Government which will clearly prohibit the taking of property for parks, recreational areas, school sites, etc. without just compensation.

CONCLUSION

This completes our testimony which, we hope, has been informative, useful and within the sensible limitations set by the Preparatory Committee. We earnestly hope that the Committee and the delegates themselves will give serious consideration to our views and our proposals.

We sincerely believe that these proposals are in the best interests of all of the citizens of our Commonwealth, both individual and corporate.

It remains only for me to thank you, gentlemen, for the privilege of presenting the views and recommendations of our Association.

If you have any questions, I will be happy to attempt to answer them.

Thank you.

Pennsylvania Health Council, Inc.

July 25, 1967

John W. Ingram, Executive Director, The Preparatory Committee
Constitutional Convention, Commonwealth of Pennsylvania
Post Office Box 6, Harrisburg, Pennsylvania 17108

Dear Mr. Ingram:

This is in reply to the form letter of June 29, 1967 from Lieutenant Governor Broderick in his capacity as chairman of The Preparatory Committee asking for any recommendations we might have on the four topics that will be dealt with by the coming Constitutional Convention.

As a state-wide federation of health and health-related organizations we have a fundamental interest in the provision of health services, and for that reason we welcome the chance to comment on the section of the State Constitution that has to do with local government. On the other matters of concern to the Convention we do not wish to express an opinion.

In regard to the constitutional provisions for local government, we feel that it is vital for the forthcoming new article to provide for enough flexibility at the local and regional level to permit the various political subdivisions to work together to the best of their capacities on problems of common concern. The article should be so written that interlocal arrangements may be made and regional agreements entered into by component units in such a way as to make possible area-wide and regional planning and provision of health, welfare and related services. Traditional political boundaries must be transcended if maximum efficiency and output are to be achieved in planning for and delivering these services, and we feel that the Constitution should specifically permit our local units of government to band together formally for these and other purposes as need arises. It would even be good, we think, for our Constitution to permit formal arrangements with political subdivisions of other states to take care of problems that cross state borders.

The Health Council also wishes to call your attention to the 1961 study of the state's health needs and resources by The Johns Hopkins University entitled "Pennsylvania's Health." The first of the ten major recommendations of this report was that minimal local public health services be made available to all parts of the Commonwealth and be provided by county or multi-county local health units. It seems to us that there should certainly be language in the new section on local government to make comprehensive local health services available to all our citizens, in line with the Johns Hopkins proposal on this point.

Thank you for your consideration of our views. We shall be glad to express them to the Convention itself, should the delegates wish to hear from us.

Sincerely,
Catherine B. Bauer, *President*

CCB:tms

A Modern Framework of Local Government

Proposals for Constitutional Revision Presented to the Constitutional Convention and its Preparatory Committee by the Pennsylvania League of Cities on July 20, 1967.

In the interest of a more simple, effective and economical framework of local government in Pennsylvania, the Pennsylvania League of Cities recommends to the Constitutional Convention the proposals listed below. These proposals by no means represent the League's final word on the vital subject of constitutional revision. Through continuous study, the League intends to make further recommendations to the Convention as circumstances warrant.

Proposal No. 1 Local Government Residual Powers

Background:

Pennsylvania local governments, like those in a number of other states, have been deterred in meeting their responsibilities by the so-called Dillon's Rule. This judicial rule provides that local governments may exercise only those powers that are affirmatively conferred upon them by statute or constitutional provision. Even where legislatures have conferred affirmative powers, the Federal Advisory Commission on Intergovernmental Relations notes, "state courts usually have narrowly construed grants of powers to local governments . . . Experience has shown that where local governments are not adequately employed to meet their responsibilities, pressure is exerted upon both the state and federal governments to assume responsibility for solving local problems and for providing needed governmental services."

Recommendation:

To help correct this negative influence on the effectiveness of local government, it is recommended that the state constitution be amended to grant "all residual functional powers" to municipalities that are not otherwise specifically denied them in the state constitution or in general law. As a guide to the writing of such a constitutional amendment, the League has attached, in Appendix I, a recommended wording drafted by the Advisory Commission on Intergovernmental Relations and the National Municipal League.

Background:

Local government is one of the powers reserved to the states in the Federal Constitution, and in Pennsylvania it has its foundation in the state constitution. In its 1959 report the (Woodside) Commission on Constitutional Revision recommended a basic constitutional amendment for the incorporation of municipalities. Its recommendation provides that the General Assembly shall provide for the incorporation of cities and boroughs, for the adjustment of municipal boundaries, and for the consolidation and dissolution of municipalities.

Idealistically, the Pennsylvania League of Cities approves of this proposed broad, unfettered grant of power to the General Assembly to create the system of local government deemed best for the residents of our state. But working with the realities of the late 1960's and what appears beyond, the League is greatly concerned with the confounding problems brought on our state by its gross fragmentation of local governments. (Some 5,900 units in 1966, including school districts and authorities.)

Legislative action has already taken place to consolidate our public school systems into some 500 districts. But the horizon shows no sign of any legislative stirring to deal with the equally important problems of annexation and consolidation of municipal and township governments and the undesirable creation of municipal authorities. Legislative action in these areas is of vital necessity if Pennsylvania is to have a local government system that is simple, economical and effective in meeting local problems. Inaction in these areas can only mean greater involvement in local affairs by the state and federal governments and resultantly less local government.

Recommendation:

In order to insure state action that will deal affirmatively with the problems wrought on the Commonwealth by the *fragmentation of local units and local responsibility*, the League recommends the adoption of a constitutional amendment (that would be an addendum to the Woodside recommendation on Incorporation and Corporate Changes) creating a Municipal Boundary Commission.

Municipal Boundary Commissions are used constitutionally in Alaska and statutorily in Minnesota and California. They provide a practical, workable method of adjusting local governments to the demographic needs of the late 20th Century and beyond.

The boundary commission concept has been suggested by the Committee for Economic Development in its report on *Modernizing Local Government*. There it recommends that: "Each state should create a boundary commission with continuing authority to design and redesign local jurisdictional lines, and to set timetables for consolidations and annexations."

The Convention Task Force on Local Government would do well to heed

the expressed purpose of the local government article in the Alaska Constitution: "Providing maximum local self-government with a minimum of local government units, and to prevent the duplication of tax levying jurisdictions." And, also, in regard to boundaries, what the Local Government Committee of the Alaska Constitutional Convention had to say about the state's responsibility over them: "The boundaries," they said, "are quite an important question and should be under some agency which can establish them along proper lines. They should not be left to the local community, they should be left to a higher authority."

(The Woodside Commission's recommendation on Incorporation and Corporate Changes, and Article X, Section 12 of the Alaska Constitution establishing a Local Boundary Commission may be found in Appendix II. The language of the latter might be used as a starting point for constitutional amendment of the Pennsylvania Constitution creating a Municipal Boundary Commission.)

Proposal No. 3 Optional Plans of City Organization and Government

Background:

In 1922 the state constitution was amended to permit the General Assembly to grant cities the right to frame and adopt their own charters. More than 25 years elapsed before the General Assembly acted by granting home rule status to Philadelphia. Thirty-five years elapsed before it enacted the Optional Third Class City Charter Law under which nine cities will soon be operating. If cities are to have the flexibility and freedom to deal with local affairs, there is strong reason for them to have self-determination in choosing a form of government and in opting to assume the powers and responsibilities of home rule. Hence, the ability of cities to choose a form of government and to assume home rule powers should be guaranteed.

Recommendation:

The adopting of an optional form of government provides a mid-way step for a city that does not choose to adopt a home rule charter. Therefore, constitutional provision for such optional plans is in harmony with a plan for constitutional home rule. Thus, the League recommends to the Constitutional Convention that it adopt the Woodside Commission's recommendation on this subject with several minor changes. The minor changes are: (1) that the General Assembly "shall" provide optional plans; and (2) that the provision be limited to cities.

The first recommendation is to insure city self-determination in this area. The second recommendation is based on the presumption that there would be a progression of powers among municipal categories, with superior corporate status vested in cities.

The Woodside Commission's recommendation on optional plans of government may be found in Appendix III.

Proposal No. 4 Home Rule Charter Making

Background:

As noted under Proposal No. 3, only the city of Philadelphia has been empowered by the General Assembly to adopt a home rule charter. The basic reason for adoption of a home rule charter has been stated as being to provide "a legal framework that will accommodate both state responsibility and local freedom in the conduct of local affairs . . . thus obviating or reducing the need for specially enacted state laws, without restricting the power of the state to deal with matters of genuine statewide or regional concern." It is fundamental that all Pennsylvania cities, not just Philadelphia, should have the constitutional given right to adopt a Home Rule Charter.

Recommendation:

The League recommends that the Constitutional Convention adopt a constitutional amendment granting cities the self-executing power (unneedful of General Assembly action) to adopt a home rule charter of government. More specifically, it recommends to the Convention the Woodside Commission's recommendation on "Home Rule Charter Making." However, the League requests that the power to adopt home rule charters be limited to cities. (The Woodside Report included boroughs under its recommendation.)

In case the Convention is concerned about the detail present in the Woodside Commission's recommendation on charter making, the League suggests that it consider amending it to provide "that the General Assembly may provide charter adoption procedures; and, if the latter does not act, the local governing body or the courts may prescribe the procedures, depending on the circumstances."

(A copy of the Woodside Commission's recommendation on the Home Rule Charter Making may be found in Appendix IV.)

Proposal No. 5 Repeal of Constitutional Restrictions on Local Borrowing

Background:

Constitutional restrictions on local borrowing have greatly handicapped local governments in meeting their governmental responsibilities; and, they have led local governments into devious means to achieve desirable governmental ends. The use of such devious methods to finance capital outlays have an undesirable effect on intergovernmental relationships, on the structure of local government and on the property tax.

Recommendation:

Much of the prior wording comes from the recommendation of the Advisory Commission on Intergovernmental Relations that states remove from their constitutions restrictions on local borrowing. As stated by the Commis-

sion: "States' limitations on the taxing and borrowing powers of local governments should be confined to basic principles and relationships of enduring and basic importance."

The League recommends to the Convention the Commission's suggested constitutional amendment which removes from the state constitution any details regarding local government borrowing powers and gives the legislature authority to establish local debt policy through the normal legislative process.

(A copy of this suggested constitutional amendment can be found in Appendix V.)

Proposal No. 6 Elimination of Tax Exemptions

Background:

Local governments are sorely pressed to find necessary revenues to carry out their responsibilities. The problem is seriously affected by the fact that large proportions of property are removed from the tax roles because of special exemptions. These exemptions are derived from the State Constitution, the General Assembly and the courts. The Pennsylvania League of Cities believes that all groups, interests and individuals should pay their fair share for municipal services received.

Recommendation:

Information has been disseminated to the effect that the Convention may make no change whatsoever in Article 9, Section 1 of the Constitution. Contradictorily, there is also opinion to the effect that *some* changes may be considered. If it is finally deemed that the Convention may make *some* changes, the League recommends the amendment of Article 9, Section 1 to prohibit tax exemptions. With appropriate wording, the amended section might read as follows:

"Section 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; *such general laws shall provide for no tax exemptions.*" The remainder of Article 9, Section 1 and conflicting sections would be repealed under such an amendment.

Proposal No. 7 Laws on Wages, Hours and Working Conditions of Local Employees

Background:

Action by the General Assembly in the area of local wages, hours and working conditions has not only been a great burden on that body; it has also removed from local control matters which appropriately and desirably belong under local responsibility. Continued action by the General Assembly in these areas can only have a destructive effect on the ability of local governments to deal with and solve what are basically local problems.

Recommendation:

To free the General Assembly from consideration of these basically local matters, and to give local governments greater freedom to act on them, the League recommends the following proposal to the Convention: That it consider in conjunction with the Local Government Residual Powers clause (Proposal No. 1) an addendum which provides that:

"Local governments shall have the *exclusive* power to pass laws relating to the wages, salaries, hours or working conditions of local government employees."

(This is similar to earlier recommendations of the local government associations and the Pennsylvania Bar Association, but is expressed in an affirmative way.)

Proposal No. 8 City Financial Aid for Public Services

Background:

Under Article IX, Section 7 of the state constitution, local governments are prohibited from obtaining or appropriating money for, or to loan their credit to, any corporation, association, institution or individual. The existence of this provision has presented a problem to cities that act to assist public service enterprises whose activities are vital to the public welfare. It has resulted in cities being forced to use indirect means (the purchasing and leasing of equipment) to aid such important community services as public transportation.

Recommendation:

The League recommends that the Convention consider the removal of this restriction on municipal financial aid to public service enterprises from Article IX, Section 7. This could be done through a constitutional amendment adding the following to the section:

"However, the General Assembly may provide by general legislation standards by which municipalities may give financial assistance to public service enterprises in the interest of the public health, safety and welfare."

Appendix I

RESIDUAL POWERS CLAUSES

Advisory Commission on Intergovernmental Relations

"Municipalities and Counties (or selected units identified to best suit the conditions in a given state) shall have all residual functional powers of government not denied by this constitution or by (general) law. Denials may be expressed or take the form of legislative pre-emption and may be in whole or in part. Express denials may be limitations of methods or procedure. Pre-

empted powers may be exercised directly by the state or delegated by (general) law to such subdivisions of the state or other units of local government as the legislature may by (general) law determine."

National Municipal League

"*Powers of Counties and Cities.* A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties and cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony."

Appendix II

INCORPORATION AND BOUNDARY CHANGES

Woodside Commission Recommendation

The General Assembly shall provide by general law for the incorporation and government of cities and boroughs and the methods by which municipal boundaries may be altered and municipalities may be consolidated or dissolved.

Article X, Section 12—Alaska Constitution

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Appendix III

OPTIONAL FORMS OF GOVERNMENT

Woodside Commission Recommendation

The General Assembly may, by general law, provide optional plans of municipal organizations and government under which an authorized optional plan

may be adopted or abandoned by majority vote of the qualified electors of the city or borough voting thereon.

Appendix IV

HOME RULE CHARTER MAKING

Woodside Commission Recommendation

(a) The qualified electors of any city or borough may adopt, amend or repeal a home rule charter of government. The adoption, amendment or repeal of a charter shall be proposed either by resolution of the legislative body of the city or borough or by a charter commission of not less than seven members elected by the qualified electors of the city or borough from their membership pursuant to petition for such election, bearing the signatures of at least ten per cent of the qualified electors of the city or borough and filed with the chief recording officer of the legislative body of the city or borough. The legislative body of the city or borough shall by resolution direct the election board to provide for holding the election in accordance with the provision of the election laws. On the death, resignation or inability to serve of any member of a charter commission, the remaining members shall elect a successor. A charter commission may propose (1) the adoption of a charter, (2) amendment of a charter or particular part or parts of a charter, or (3) repeal of a charter, or (4) any of these acts, as specified in the petition.

(b) The General Assembly shall provide by statute for procedure not inconsistent with the provisions of this section, and may provide by statute for a number of charter commission members in excess of seven on the basis of population. In the absence of such legislation, the legislative body of a city or borough in which the adoption, amendment or repeal of a charter is proposed shall provide by ordinance or resolution for the procedure; and the number of charter commission members shall be seven. The legislative body may, if it defaults in the exercise of this authority, be compelled by judicial mandate, at the instance of at least ten signers of a sufficient petition filed under this section, to exercise the authority.

(c) All expenses of elections conducted under this section and all proper expenses of a charter commission shall be paid by the city or borough.

(d) Every charter, charter amendment and charter repeal proposed shall be submitted to the vote of the electors of the city or borough in the manner provided by the election laws, and shall not become effective unless a majority of the electors voting on it votes in favor of it.

(e) Any part of a proposed home rule charter may be submitted for separate vote. Alternate sections or articles of a proposed home rule charter or proposed charter amendments may be submitted. The section or article re-

ceiving the larger vote, in each instance, shall prevail if the charter or amendment is adopted.

(f) A city or borough which adopts a home rule charter may exercise any power or perform any function which the General Assembly has power to devolve upon a non-home rule charter city or borough, so long as the power or function is not denied by statute nor by its home rule charter and it is within limitations as may be established by the statute. This devolution of power does not include the power to enact private or civil laws governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

(g) Charter provisions with respect to municipal executive, legislative and administrative structure and organization, and to the selection, compensation, terms and conditions of service, removal and retirement of municipal personnel are of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

(h) A municipal legislative body or charter commission which proposes the termination of home rule charter status by repeal of a home rule charter shall incorporate in the proposition to be submitted to the qualified electors a specification of the form of government under which the city or borough would thereafter operate in the event of repeal, whether it be a form prescribed by general law for municipalities of its population class or one of such optional forms as may have been authorized by general law for cities or boroughs of its population class. A municipal legislative body or charter commission proposing charter repeal shall also, by resolution of that body, determine when the transition to the new form of government shall take place in the event of repeal and make such other provisions as may be appropriate to effect an orderly transition from home rule charter to non-home rule charter status.

(i) At least thirty days before an election thereon, notice shall be given by publication in a newspaper of general circulation within the city or borough that copies of a proposed charter, charter amendment or repeal proposition and resolution are on file in the office of the chief recording officer of the legislative body of the city or borough, and that a copy will be furnished by him to any qualified elector or taxpayer of the city or borough upon request.

(j) The qualified electors of a city or borough shall not elect a charter commission more often than once in four years.

LOCAL BORROWING POWERS

Recommendation—Advisory Commission on Intergovernmental Relations

Section 1. The legislature may pass laws regulating the taxing and borrowing powers of the (local governments) (political subdivisions) of the state.

Section 2. (All parts of the Constitution in conflict with this amendment are hereby repealed.) (Sections [identify those sections of Constitution to be repealed] are hereby repealed.)

Section 3. (Insert appropriate language, consistent with the referendum requirements for amending the Constitution and with state election laws, for submission of the proposed amendment to the electorate.)

Pennsylvania State Association of County Controllers

July 24, 1967

Mr. John W. Ingram, Executive Director
The Preparatory Committee
Constitutional Convention
Commonwealth of Pennsylvania
P. O. Box 6
Harrisburg, Pennsylvania 17108

Dear Mr. Ingram:

On behalf of the Executive Committee of the Pennsylvania State Association of County Controllers, we wish to present the following resolution objecting to the Constitutional Convention which will meet this fall:

WHEREAS, the present system of County government has been in effect for almost a century; and,

WHEREAS, the system has been found to be the most economical method on a local basis; and,

WHEREAS, by providing for the election of County Officials by the voters they are made directly responsible to the people of the County; and,

WHEREAS, the Constitutional Convention will meet this fall to consider changes relating to local government;

BE IT THEREFORE RESOLVED, that this Association opposes any changes to the present constitution in so far as it relates to County government with particular reference to the Office of County Controller.

Very truly yours,

Carl D. Butler, Secretary
Representing all the members
of the Executive Committee

To the Preparatory Committee, Commonwealth of Pennsylvania Constitutional Convention, from the Pennsylvania State Association of Elected County Officials, July 27th, 1967

Pennsylvania's counties provide an unusually interesting subject for a study of local government and its importance to good citizenship. The county today stands between the township and city and the state in size and, usually, in importance. Originally divisions for simply facilitating the administration of state laws, counties have developed into vital instruments of local self-government. It is here that the individual citizen can best evidence his right to and interest in electing those who govern at the local level. The county has fallen heir to many varied duties which, in many instances, are not performed, in any way, by the township, the city or even the state. Counties vary in importance on the local level from New England, where the old established town meeting style is still an effective form of local government, to the parish in Louisiana which performs most of the functions of local government. The county, in Pennsylvania, has become the vehicle for government at the local level, with officials responsible to the local electors and representing the local citizens. They are charged with effectively and efficiently carrying on local representative government of, for and by the people right in their home territories.

To go into a detailed listing of the activities of a county system of government, as we know it, and the activities of the various elected row offices would cover many pages and take much of your time. This should and will be done, at a later date, and before the full committee considering this phase of the constitution.

However, a resume of the historical background of the county would be pertinent at this point. We are primarily interested in Pennsylvania so we will limit most of our remarks to Pennsylvania though some brief reference will be made to other areas where they relate to our own situations.

The county is closely interwoven in the political and social life of our Commonwealth. It is an integral part of our daily life. It is a representative system of government in that its officials are elected by popular vote of the citizens of the county and are, therefore, both directly responsible to and responsive to the electorate. In Pennsylvania the town was the original settlement but this fact never reduced the counties to insignificance. On the con-

trary the county seat is usually still the chief center of business and political interest and the coveted spot to edit a newspaper with a favored circulation. The county system has deep roots. Its origins can be traced to England where the county was an old tribal settlement, sometimes an entire kingdom, as in Kent, and the name county was given to this area after the Norman Conquest from their likeness to the counts' government on the continent.

Between the time of William Penn's Charter in 1682 and the Revolutionary War the foundations of county government were laid. Judges, sheriffs, assessors and commissioners, treasurers, recorder of deeds, register of wills, district attorneys, prothonotaries, all entered the scene between 1696 and 1722 and thereafter auditors and eventually controllers appeared.

The constitution of 1838 gave more power to the electorate to elect their own office holders. Throughout the years additional changes have taken place but always within the structure of retaining the right of election. This marked a shift from the original aristocracy of wealth and education, as a governing body, to the aristocracy of the citizenry as voters to be the governing body. Many ex-officio boards have been established as the years have indicated the necessity for additional areas of interest by the government elected by the voters, but these have always been within the complete framework of the elective system for those holding public office and for those in a governing position. It is noted that the earliest records indicate that only one or two of the officials governing the people were actually elected by the people they governed. This has steadily changed until now all the offices in county government are elected by the people over whom the same elected office holders are the governing body.

One factor stands out in bold relief in all the county structures of this country, that is here, more than anywhere else, the citizenry is given the full authority of electing its own government, selecting those they feel best qualified to represent them in whatever office chosen. To now say that the electorate is unable to ascertain the qualifications of individuals for office, and to select those they feel best qualified to represent them on the local level, is to attack the very foundation of the system of democracy which has made this country the greatest power on earth. Certainly if the electorate is now unable to exercise suitable judgment in the selection of their local officials, where those officials are known and their qualifications are understood, then how much less are they capable of electing those officials to govern on the state and national level? Certainly, if an individual is incompetent on local matters, where he should be expected to be most informed, then he is even presumed to be more incompetent on state and national matters. It is not too extreme to say this can well be the fatal casting of the die that might as well pass for a monarchy or dictatorship under the guise of giving the poor benighted local citizens the "best" government. This charge those of us who have been active in politics both as citizens and as office holders vehemently

refute and oppose. The right of election of officials to govern is a fundamental right of this country, embodied in the national constitution, and a fundamental principle for which the American Revolution was fought. To remove this right, under any subterfuge of so-called "improved government" by specialists who are no longer responsible to those they are to govern, is contrary to the best interests of everyone! It is not in the interests of good government. No system can ever be perfect. To expect a political system to be the perfect utopia in all matters when all the brains gathered together in any great international company, or on the campus of any small or large college or university have never been able to achieve that perfection evidences a complete inability to face reality. When the citizenry are denied the right of active participation in all phases of their elective government the country is catapulted down the road of retreat. Rome continued as a great empire as long as, and only as long as, the right of citizenship was the highest honor to be achieved and participation was not only a right but a privilege. When this right and privilege was substituted for by the mercenary and the paid soldier or "expert" then Rome began to decline. I need only to refer my listeners to the great work of Gibbons—*Rise and Fall of the Roman Empire*—to trace this decline.

The American two-party system appears as one of the truly conservative arrangements in the world of politics, a system designed by accident or providence to delay, check and frustrate the ill-digested plans of men while permitting them to govern in a responsible and popular manner. The elective system of government, as developed under our two-party system is the only system giving due credence to the thoughts and rights of the minority and of the majority. To tamper with this delicate balance and acceptance of the right of all the people is to interfere with the mechanism which has been largely responsible for the growth of our country as we know it today.

The right of voting for the individuals to represent the people of any community, large or small, is inherent in the two-party system of government. It is not to use political power imaginatively or purposefully in order to remake society that we called our parties into being and that we, as citizens of this country, have given the right to vote to all eligible, but to render the mechanics of government more comprehensible and efficient. Up to now, for the most part, as Dr. Clinton Rossiter has indicated, there has been little reason to complain of the pattern of political compromise worked out by history to serve our peculiar ends. In the period since the founding of our country over this span of American history the political parties have done few things the voters did not want them to do, and done most things that the voters wanted them to do. The more one contemplates our political history the more certain it seems that the right of election by the voters of every community of those who are to be the lawmakers, the office holders, the representatives on the governing level of the people, the more certain it seems that this plan was designed prescriptively to serve the purposes of the people locally

under the terms of their constitution. It is not the politics of democracy in the abstract or of the British democracy—with which we are so often unfavorably compared—but of American Democracy, a way of life with unique needs and problems and a way of life which has been built upon the inalienable right of the citizens of a free country to elect all those who are to govern.

The further away from the local level government is removed, that is the election of those to handle the governing and to make the laws, the less interested the voter becomes. Recently in a study conducted by the University of Michigan it was made apparent that where local elections were involved approximately 67% of those voting did so because of their interest in the local issues and candidates. Whereas on the level of a wider area, only 45% were voting because of interest and this percentage proceeded to drop as the area of involvement spread further away from the home community of the voter.

Every effort to limit the number of opportunities for election diminishes the interest of the voter. Another recent survey made on voting habits has shown that 57% of those voting considered the personal record and standing in the community of the individual candidate as the most important factor, indicating a knowledge of the individual candidate by the voter. On the other hand only 3% of the same voters considered this not important. The same survey indicated that between 7 and 21% of the total number polled, considered state and national matters as unimportant and only 14% to 26% of the same number polled considered state and national interest to be very important. These percentages are considerably behind the percentage of those voting who considered the local matters as the most important.

Thus changes in removing from the vote of the people those who will be in charge of their community, or by removing from an area, by combining several, or many, areas into much larger units, the individuals or offices for election, will undoubtedly further reduce the interest and the participation of the individual in the performance of his duties as a citizen, the exercise of his right to vote and to say who is to govern.

It is rather ironic, today, to note an effort apparently to be made to remove local control over the local activities by taking those offices out of the elective arena and the right of the citizens to elect those officials, coming at the same time that the federal government has come to the conclusion, after much effort to the contrary, that much of the governing process should be returned to more local control for better government so that there would be more concern in the matters of local government by the citizens of every community. Today we are noting a definite trend on the part of the federal government to begin to return to the states many of the prerogatives they formerly had and by returning these to the states will, likewise, return much of this authority to the local areas where it originally rested.

To dream of an utopia is fine, but much of the energy spent in attempting to cure all political troubles, at least on the county level, by removing the op-

portunity of active participation of the citizenry, could be more properly spent in helping interest more individuals in an active participation in their government, a more interested participation in voting, in political activities and in support of office holders who, for the most part, are attempting to render sound, efficient and effective government on the local level. It is our very earnest judgment that to take away from the people their right to choose county officials in the sanctity of the voting booth could be a blow against the fundamental principle of good citizenship.

WHEREAS individual resolutions have been forwarded to your Committee by the individual member associations of the Pennsylvania State Association of Elected County Officials expressing the views of each association concerning the place of county government in the framework of the democratic processes in our Commonwealth, and

WHEREAS these resolutions express the considered opinions and experience of these associations in their daily work as members of county government, and

WHEREAS the Constitutional Convention will meet in session beginning in December 1967 for the purpose of reviewing the present constitution of the Commonwealth of Pennsylvania;

NOW BE IT RESOLVED that this association further commends all these resolutions to your committee for their favorable review and furthermore in view of the fact that the legislature has already removed the duties of, and the salary connected with, the office of County Surveyor, the member associations in the Pennsylvania State Association of Elected County Officials, recommend to your committee that a constitutional amendment be proposed removing the office of County Surveyor from the elected offices of the county government.

Attest,

Harry C. Burd, President

Donald B. Hoffman
Secretary-Treasurer

July 18th, 1967

Local Government Testimony Presented By Pennsylvania State Association of Township Commissioners

The following proposals for Constitutional Revision to be presented at the Constitutional Convention through its Preparatory Committee at the hearing held July 27, 1967.

The Pennsylvania State Association of Township Commissioners has a membership of 91 townships representing a population density of approximately two million citizens of the Commonwealth.

Act No. 569 approved May 27, 1949, as amended, sets forth why this Association was established. An excerpt therefrom reads as follows:

"This Association Was Created for the Purpose of Discussing Various Questions and Subjects Pertaining to the Duties of Township Commissioners, of Devising Uniform, Economical and Efficient Methods of Administering Affairs of Townships of the First Class"

The First Class Township Commissioners Association is a member of the Pennsylvania Local Government Conference, the organization representing all of the tax levying local governments of the Commonwealth—cities, boroughs, townships, counties and school districts—which in recent months has established a general policy statement concerning the administration, structurally and financially, of the six local government units of the Commonwealth.

As a matter of brevity, and in order not to be repetitious, this Association subscribes to and unanimously endorses the policy statement of the Local Government Conference which will be presented in a detailed and proposal form at this hearing.

Accordingly, the Officers and Executive Committee of the Pennsylvania State Association of Township Commissioners recommends to this Preparatory Committee the proposals as approved by the Conference.

Elections—The Association of Township Commissioners is mindful that Pennsylvania has many serious defects in its archaic structure of local government, many of which deprive constituencies of proper representation on governing bodies of state and local governments because of inadequate election laws.

Absentee ballots and election laws in general should be up-graded to assure the electorate of the Commonwealth proper representation at the local

government level and in our halls of legislature. In recent years, counties and the constituents residing therein have been without state senatorial representation. The absence of and failure to seat the elected legislative representatives hamper and deter proper and adequate consideration of local government legislation that may affect the entire Commonwealth.

HOME RULE

Article XV, Section I, of the present Constitution of the Commonwealth grants broad and general powers to the cities, boroughs, and townships of the Commonwealth. These powers should be expanded to meet the urban growth and population expansion in the rapidly growing urban municipalities.

The First Class Townships are seeking new methods to operate more effectively and to administer better local services to their residents.

Broad local government taxing powers provided by adequate enabling legislation for local governments should be expanded in Pennsylvania and the local tax sharing principle should be maintained so that local governments will have the utmost flexibility in meeting local problems and local needs. The assessment function should continue to be a local function primarily because assessment is related to the real property and this tax is levied by local governments. While the assessment function can be administered best at the county level, other local governments should be represented in assessment policy decisions.

Removal of Debt Limitations

The Association believes that constitutional and statutory debt limitations on local government are too restrictive and serve no useful purpose. Maximum latitude should be given to local governments in the issuance of bonds since the most practical limitations are set by the economics of bond sales. Statutory limitations should be restricted to procedural matters.

Annexation

This Association is in opposition to any legislation which would liberalize in any way the present annexation laws.

In Conclusion

These proposals prepared by First Class Township Commissioners Association are but a fragmentation of the many requirements for up-grading, up-dating, and strengthening local governments of the Commonwealth. The implementation in whole, or in part, of the guidelines embodied herein, would result in stronger local government and provide for better governmental services to all citizens of the Commonwealth.

Pennsylvania State Coroners Association

It is the voice of The Pennsylvania State Coroners' Association on the following resolutions:

Whereas, the present system of County Government has been in effect for almost a century and whereas, the system has been found to be the most economical method providing essential services to the citizens of the Commonwealth of Pennsylvania on a local basis and whereas, by providing for the election of County Officials by the voters, they are made directly responsible to the people of the County and whereas, the Constitutional Convention will meet this Fall to consider changes relating to local government; now therefore be it "Resolved that this Association oppose to the present any changes in the Constitution insofar as it relates to County Government with particular reference to the Office of Coroner.

Edward A. Haegele, M.D.
Sec. Treas. Pa. State Coroners' Association.

Prothonotaries' and Clerks of Courts' Association

At the 1967 Annual Convention of the Prothonotaries' and Clerks of Courts' Association the following resolution was proposed and unanimously adopted:

Whereas, the present system of County government has been in effect for almost a century and *Whereas*, the system has been found to be the most economical method of providing essential services to the citizens of the Commonwealth on a local basis and *Whereas*, by providing for the election of County officials by the voters they are made directly responsible to the people of the County and

Whereas, the Constitutional Convention will meet this fall to consider changes relating to local government;

Now therefore be it Resolved that this Association oppose any changes to the present Constitution in so far as it relates to County government, with particular reference to the Office of Prothonotary and Clerk of Courts.

Signed by the members of the Executive Committee

Register of Wills and Clerk of the Orphans' Court Association

The executive committee of the Register of Wills and Clerk of the Orphans' Court Association of Pennsylvania has met and passed unanimously the following resolution:

Whereas, the present system of County government has been in effect for almost a century and

Whereas, the system has been found to be the most economical method of providing essential services to the citizens of the Commonwealth on a local basis and

Whereas, providing for the election of County officials by the voters they are made directly responsible to the people of the County and

Whereas, section 13 provides that no new county may be established which would reduce any county to less than 400 square miles or less than 20,000 inhabitants.

We feel that this section should be retained since many problems would arise. As far as the Register of Wills' Association is concerned the Constitutional Convention Committee would arbitrarily change county lines, possibly creating new counties or combining some present counties. This is especially true when a person is searching title to real estate which would possibly necessitate his driving to two or three different county seats in order to check a will.

Whereas, section 1 and 2 of Article 14 lists the names of the County Officers who shall be elected and provides for their terms. We feel that this section should be retained with the possible exception of the provisions which makes the Treasurer ineligible to succeed himself.

The basis for argument of the retention of the present system of electing Registers would be that they have many judicial functions and therefore, are responsible to the people of the entire County and not merely to the courts. Since they are responsible to the entire County they should be elected by the voters of the County and not appointed and subjected to the direct supervision of the court.

Therefore, be it resolved that this Association opposes any change to the present Constitution in so far as it relates to County Government with particu-

lar reference to the Register of Wills and Clerk of the Orphans' Court Association.

Sincerely yours,

Harry R. Burd;
Secretary & Treasurer
Chairman of the Leg. Committee

Sheriffs' Association of the Commonwealth of Pennsylvania

July 25, 1967

Hon. John W. Ingram, Exec. Director
The Preparatory Committee
Constitutional Convention
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

Dear Mr. Ingram:

On Thursday, July 20th, 1967, the Sheriffs' Association of the Commonwealth of Pennsylvania, at their Annual Conference held at Beaver Falls, Pennsylvania, unanimously adopted the following Resolution:

WHEREAS, the Pennsylvania Constitutional Convention will open this Fall, and

WHEREAS, one of the subjects to be considered by the Convention is that of County government, and

WHEREAS, the present form of County government has been in existence since the Constitution of 1874 with only slight changes having been made over this long period of time, and

WHEREAS, there have been so few changes made to the sections dealing with County government that it is obvious that the present Constitution is sufficient, and

WHEREAS, good County government is based upon the election of competent officials by the voters so that the people have a voice in the management of this County,

NOW THEREFORE BE IT RESOLVED, that the Sheriffs' Association of the Commonwealth of Pennsylvania urges the members of the Constitutional Convention to retain the present sections of the Penn-

sylvania Constitution insofar as they relate to the designation and election of County officials.

Very truly yours,

Fred W. Lamberton
Secretary-Treasurer
Sheriffs' Association