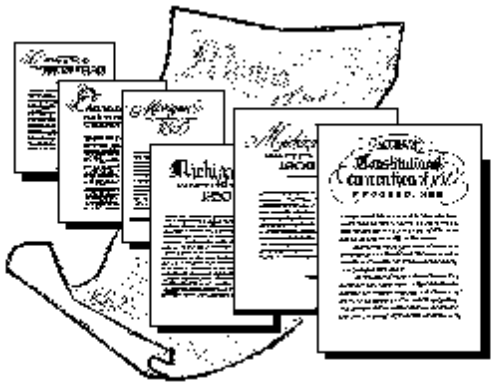
A Comparative Analysis of the Michigan Constitution

Volumes II

Articles VIII



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VIII LOCAL GOVERNMENT

A. COUNTIES

1. Counties; Corporate Character, Suits

Article VIII: Section 1. Each organized county shall be a body corporate, with such powers and immunities as shall be established by law. All suits and proceedings by or against a county shall be in the name thereof.

Constitutions of 1835 and 1850

No similar provision is found in the 1835 constitution. The 1850 constitution contained an exact duplicate of this section (Section 1, Article X).

Constitution of 1908

This section has not been amended.

Judicial Interpretation

This section has been interpreted to mean that the "fundamental and necessary characteristics" which were possessed by counties prior to the adoption of the 1850 constitution, whether by usage or recognition, could not be changed by legislation (Attorney General v. Detroit Councilmen, 58 Mich. 213). The interpretation of what is "fundamental and necessary," however is left to the legislature.

With respect to "new" powers which the county may acquire, it is established judicial doctrine that the county is a creature of the state. The county is a quasi-municipal corporation which can exercise only those powers conferred upon it by the legislature (Mosier v. Wayne County Board of Auditors, 295 Mich. 27; Wright v. Bartz, 339 Mich. 55).

Other State Constitutions

Four states have similar provisions—Arizona, Article XII, Section 11; Oklahoma, Article XVII, Section 9; and Georgia, Article XI, Section 1. In at least 26 other states, however, introductory sections confirm the existence of counties by name or description or by defining their relationship as subdivisions of the state. Neither

the 1961 draft version of the Model State Constitution nor the United States constitution confirms existing counties. The Model State Constitution assumes the existence of counties and leaves their organization to the legislature.

Comment

None of Michigan's three constitutions has any preambles or introductory sections which contain a clear statement confirming existing counties. In each of the three constitutions the existence of counties is taken for granted and no mention is made of their relationship to the state.

Subsequent statutory legislation in Michigan makes it clear that the legislature assumed that the boundaries of the several counties were fixed at the time the 1908 constitution was adopted. The legislature actually has power to create new counties (M.S.A. 5.281) but has not done so.

For general comments on Sections 1 through 15a, see end of Part A, this chapter.

2. Townships in County; City as Separate County

Article VIII: Section 2. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless in pursuance of law a majority of electors voting on the question in each county to be affected thereby shall so decide. When any city has attained a population of 100,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing said city into a separate county.

Constitutions of 1835 and 1850

The constitution of 1835 contained a provision which stated that no organized county could be reduced by the organization of new counties to less than 400 square miles (Section 7, Article XII). The constitution of 1850 (Section 2 of Article X) contained a provision similar to the present provision.

Constitution of 1908

The 1908 version modified the 1850 provision by making certain substantive changes: 1) The population requirement for the formation of new counties was raised from 20,000 to 100,000 in recognition of the population growth of the state, 2) approval for the formation of the new county was to be required of the city desiring county status and the remainder of the county voting separately. The latter clause was inserted to protect the interest of minorities residing in the "rump" of the county in the event large cities were to seek separate county status. It is significant that this provision has never been used.

Judicial Interpretation

Judicial interpretation has determined that a county cannot be organized in areas in which there are no organized townships (People v. Maynard, 15 Mich. 463); the constitutional prohibition against counties of fewer than 16 townships precludes counties of unreasonably small size but is not intended to prohibit the division of townships if convenience or necessity so dictates (Bay County v. Bullock, 51 Mich. 544); fractional townships as surveyed by the United States are townships within the meaning of this section (Rice v. Ruddiman, 10 Mich. 125).

Other State Constitutions

Some 22 other states make constitution provision for the creation of new counties, whether out of territory not previously organized, or by a division (or city-county separation) of an established and organized county. In 16 of these states some form of referendum in the affected areas is required in order to effect a division of the county. In four states such a division of the county is dependent upon some geographical requirement. In only two states, New York and Virginia, is such a division of counties at the virtual discretion of the legislature. In Virginia the discretion only applies to counties whose length is three times their breadth or which exceed fifty miles in length.

The 1961 draft version of the Model State Constitution empowers the legislature to provide for "...incorporating; merging, consolidating and dissolving such counties, cities and other civil divisions…." This presumably also empowers the legislature to divide counties at its discretion.

Comment

The convention may wish to review this section to see whether it meets the needs of the state in facilitating the trend toward larger and more economical units of government. As the section reads, the restriction to 16 townships, except by a vote of

the electorate, probably serves to discourage any kind of consolidation. The second portion of this section providing for city-county separation of cities of 100,000 or over appears to make possible the creation of another unit of government in an area which may already have too many overlapping units of government. The question is whether this section in any way facilitates or hinders progress in solving problems of metropolitan government, urban sprawl and fringe areas.

3. County Officers

Article VIII: Section 3. There shall be elected biennially in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Constitutions of 1835 and 1850

The 1835 constitution provided for the election for a two-year term of all of the officers now specified and, in addition, for the election of one or more coroners and a county surveyor (Article VII, Sections 3 and 4 and Article VI, Section 50). The 1850 constitution omitted reference to the election of a coroner and a surveyor and added a provision for combining the offices of clerk and register of deeds.

Constitution of 1908

The only change in the 1908 version is one of wording and the deletion of a stipulation for the filling of vacancies. In the 1908 constitution the filling of vacancies, including those occurring in county offices is provided for in Article XVI, Section 5, which authorizes the legislature to provide by law for the filling of all vacancies where no specific constitutional provision has been made.

Judicial Interpretation

The only portion of this section which has raised important litigation is that which deals with the power of the supervisors to combine the offices of clerk and register of deeds. It is now well established that boards of supervisors cannot consolidate these offices in mid-term (Op. Atty. Gen., Oct. 25, 1939) and cannot combine these offices once candidates for both offices have been nominated at primary election (Op. Atty. Gen., August 19, 1946, No. 0-4968).

Other State Constitutions

Over three-fourths of the state constitutions have provisions similar to this section of the constitution. The number and variety of county officers constitutionally provided for may vary from state to state but most states provide for at least five such offices by name and many stipulate eight or more. Sheriffs, prosecuting attorneys, clerks, treasurers, and coroners are among the officers most frequently provided for by constitutional provisions.

The 1961 draft version of the Model State Constitution makes no mention of county officers.

Comment

This section is rather specific in its requirements as to the election and terms of office of certain county officials. There is a real question whether such matters ought to be provided for in the constitution. In the interest of flexibility and adaptability, the advisability of leaving these matters to regulation by general law is an alternative which might be seriously considered. At least that part of the section dealing with the biennial election of these officers might perhaps better be statutory. The authorization to the board of supervisors to combine the offices of clerk and register of deeds might be reconsidered in the light of a broader grant of power to boards of supervisors to effect administrative reorganization of county governing machinery whether by constitutional or statutory authorization.

4. Offices at County Seat

Article VIII: Section 4. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

Constitutions of 1835 and 1850

The 1835 constitution had no similar provision. The 1850 constitution contained an exact duplicate of this provision.

Constitution of 1908

This section was carried over from the 1850 constitution without change and has not been amended. This provision apparently is sufficiently clear and precise as to have raised no important legal question.

Other State Constitutions

Ten other state constitutions specify that the office and records of some or all county officers must be located at the county seat or at a particular place in the county designated by law. Of these, only four—Florida, Montana, Nevada, and Pennsylvania—specifically state that it shall be the county seat where the offices and records are to be kept. The 1961 draft of the Model State Constitution has no such provision.

Comment

Consideration might be given to removing this section and to making provision for this by statute.

5. Sheriff

Article VIII: Section 5. The sheriff shall hold no other office. He shall be elected at the general election for the term of 2 years. He may be required by law to renew his security from time to time and in default of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts.

Constitutions of 1835 and 1850

The 1835 constitution contained a similar provision except that the time of election was not specified and there was a prohibition against holding the office of sheriff longer than four years in any period of six (Article VII, Section 4). The 1850 constitution continued the 1835 provision with minor changes in wording (Article X, Sections 3 and 4).

Constitution of 1908

The constitution of 1908 as originally adopted continued without change the 1850 provision. This section was amended in 1926 to delete the prohibition against holding office for more than four years out of a six-year period and to provide for a two-year term and election at the general election.

Other State Constitutions

The constitutions of most other states mention the office of sheriff. Election of this officer is provided for in the majority of them. In California, the legislature may provide either for election or appointment. In some 11 other states the term is fixed

for two years. In three states, Massachusetts, Washington, and California, the legislature is authorized to fix the term of office. In some 14 states dual office holding by sheriffs is prohibited for particular or all other public offices. The office most commonly prohibited, when specified, is that of legislator. At least six other states require that bond be posted and in at least two other states failure to post bond from time to time creates a vacancy in the office. The 1961 draft of the Model State Constitution contains no similar provision.

Comment

Dual office holding, whether of constitutional or statutory incompatibility, is a matter which should be reviewed as a total problem rather than as an isolated problem affecting particular public offices. There are a variety of reasons for prohibiting dual office holding and provisions, whether constitutional or statutory, for some or all public offices might be provided for in one place. Provision for biennial election and the matter of the security might both be deleted. The election provision is already covered in Section 3 of this article and the security matter is one which might properly be regulated by a general provision as it is a broader problem than one touching only the office of sheriff.

6. Jury Commissioners

Article VIII: Section 6. The legislature shall by general law provide for the appointment of a board of jury commissioners in each county; but such law shall not become operative in any county until a majority of the electors of the county voting thereon shall so decide.

Constitutions of 1835 and 1850

Neither the 1835 nor the 1850 constitutions contained a similar provision.

Constitution of 1908

The new section was included in the 1908 constitution on the ground that up to 1908 many of the larger cities and counties were in fact appointing jury commissioners on the basis of special acts. This section made it possible, by passage of a general law, to make this privilege available to all counties.

Other State Constitutions

There is no indication from available sources that a system of jury commissioners is constitutionally provided for in any other state.

Comment

As indicated, jury commissioners are not generally provided for in other states. Regardless, however, of whether or not jury commissioners ought to be part of our judicial system, matters of judicial procedure might better be left to a statutory judicial code which can be periodically reviewed and modified without recourse to constitutional amendment.

7. Board of Supervisors; Representation of Cities

Article VIII: Section 7. A board of supervisors, consisting of one from each organized township, shall be established in each county, with such powers as shall be prescribed by law. Cities shall have such representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

Constitutions of 1835 and 1850

No such provision was contained in the 1835 constitution. The 1850 constitution contained substantially the same provisions except that they were contained in two separate sections—Sections 6 and 7 of Article X.

Constitution of 1908

This section has not been amended.

Judicial Interpretation

This section confers upon the legislature the power to fix the representation of cities on boards of supervisors (Op. Atty. Gen., 1913). The membership of a board of supervisors cannot be reduced to less than one supervisor from each organized township, without a constitutional amendment, even though an unwieldy board may exist (Op. Atty. Gen., 1933-1934). The board of supervisors of a county, as an administrative body, has no inherent powers.[1]

[1] Mason County Civic Research Council v. Mason County, 343 Mich. 313.

Boards of supervisors have such powers as shall be prescribed by law.[2]

Other State Constitutions

Except in the six New England states, where counties are primarily judicial districts rather than legislative or administrative units, all states provide for some effective governing body for the county (borough in Alaska and parish in Louisiana). In some 20 states, this body is called a board of county commissioners, county board, or county commissioners. Some six other state constitutions mention or authorize a board of supervisors. In the other states the name of the county governing authority varies greatly. A number of Southern states have county courts; Louisiana has a police jury; and Arkansas has a quorum court. At least nine state constitutions prescribe the size of the governing boards in the constitution. A number of state constitutions specify the term of office.

Comment

In view of the size of certain county boards of supervisors (Wayne County with over 100 supervisors), consideration might be given to the question of whether tying representation to a constitutional requirement such as this is in the best interest of efficient county government. Even if the unwieldy size of boards of supervisors is of itself insufficient reason to change the basis of representation, consideration of whether the whole question of representation might better be left to statute is of importance.

8. Powers of Counties

Article VIII: Section 8. The legislature may by general law confer upon the boards of supervisors of the several counties such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper.

Constitutions of 1835 and 1850

No similar provision was contained in the 1835 document. The 1850 constitution, Article IV, Section 38, contained a provision similar to the present section which, however, was applicable to townships, cities, villages as well as counties. The 1850 provision did not require that the legislature act by "general law."

[2] Wright V. Bortz, 339 Mich. 55.

Constitution of 1908

In the 1908 constitution this grant of power can be found in separate sections dealing with each unit of local government.

The addition of the requirement "by general law" was an important change from the 1850 provision. The 1908 provision also added the stipulation "not inconsistent with the provisions of this constitution." This section has not been amended since 1908.

Judicial Interpretation

This provision is clear and precise and no significant litigation has arisen. Early in the history of the constitution two points were clarified (1) that the legislature in the exercise of its powers is only limited by the national and state constitutions (Attorney General v. Marr, 55 Mich. 445) and (2) boards of supervisors have no power to repeal or nullify valid enactments of the state legislature (Op. Atty. Gen., 1914, p. 327).

Other State Constitutions

At least 10 state constitutions have provisions which authorize the legislature by general law to confer powers upon counties. Several additional constitutions grant the substance of this power to their respective legislatures but are more specific in enumerating the general classes of powers that may be conferred upon counties.

Comment

This provision is a broad grant of power to the legislature to deal with the details of county government. It is the core of the legislature's power to deal with the civil subdivisions of the state. All other provisions dealing with county government in the present constitution are, in effect, limitations on this broad grant of power. See Comment at the end of Part A, this chapter.

9. Salaries; Claims Against Counties

Article VIII: Section 9. The boards of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law. The boards of supervisors, or in counties having county auditors, such auditors, shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law.

Constitutions of 1835 and 1850

The 1835 constitution contained no similar provision. The 1850 constitution contained a provision (Article X, Section 10) dealing with the substance of the section but differing from the present section in the following:

> The 1850 provision as amended limited the power to fix salaries, compensation, and to adjust claims to a few counties rather than all counties.
>
> The 1850 section made no provision for appeal from the decisions of boards of supervisors or auditors.

Constitution of 1908

In changing this section the 1908 convention felt that the newer provision gave greater latitude to all counties in this matter.

In addition, appeal to the circuit court provided a less expensive appeal procedure than mandamus action which was possible under the 1850 provision.

Opinions of the attorney General

County officers are entitled to legal fees unless the supervisors in fixing salaries state that salaries shall be in lieu of fees (Op. Atty. Gen. 1917, p. 235); and county supervisors cannot change the compensation of county officers which have already been fixed by general or local statute (Op. Atty. Gen. 1926-1928, p. 753).

Other State Constitutions

All state constitutions make provisions for county control of their financial affairs. At least a dozen states make some specific reference to limitation on counties in the payment of fees, salaries, and other compensation. The 1961 draft of the Model State Constitution makes no reference to this subject matter

Comment

Consideration might be given to having these provisions provided for by general law.

10. Power of Taxation; Limitation

Article VIII: Section 10. The board of supervisors of any county may in any 1 year levy a tax of 1/10 of 1 mill on the assessed valuation of said county for the construction or repair of public buildings or bridges, or may borrow an equal sum for such purposes; and, in

> any county where the assessed valuation is less than 10,000,000 dollars, the board may levy a tax or borrow for such purposes to the amount of 1,000 dollars; but no greater sum shall be raised for such purposes in any county in any 1 year, unless submitted to the electors of the county and approved by a majority of those voting thereon.

Constitutions of 1835 and 1850

No similar provision was contained in the 1835 constitution. The provision in the 1850 constitution (Article X, Section 9) contained almost the exact duplicate of this section except that it stated that any county could borrow or raise by tax one thousand dollars for the purposes mentioned rather than specifying such borrowing and taxation in terms of "one tenth of one mill."

Judicial Interpretation and Opinions of the Attorney General

This provision appears to raise questions as to the kinds of purposes for which such taxes may be used, and also the nature of projects which may be financed from funds other than those raised by the millage. In Rude v. Muskegon County Building Authority, 338 Mich. 363, it was held that where the authority had a debt of $200,000 for acquiring a building for welfare purposes and where the county proposed to payoff the debt by a reasonable rent charge, such financing did not come within the limitations of this section. The substance of this decision was similarly upheld in Op. Atty. Gen. March 17, 1958, No. 2960. With respect to the purposes for which such moneys may be used, boards of supervisors apparently may not levy beyond the 1/10 of one mill tax limit for purposes of creating sinking funds for construction. The content of the provision is intended to limit legislative power to an authorization of taxes levied on the assessed valuation and to limit the purpose of such taxations, as well as of borrowing, to the construction and repair of county buildings (Op. Atty. Gen., August 28, 1951, No. 1436).

Other State Constitutions

Most state constitutions contain provisions which relate to the power of counties to tax and the purpose for which they may tax and incur debts. Some of these constitutional provisions state absolute tax and debt limits; some of them specify the limit of taxes and debts which may be incurred but authorize the legislature to fix the actual limits. Some, like the Model State Constitution, merely authorize the legislature to fix the limits by law.

11. Charitable Institutions

Article VIII: Section 11. Any county in this state, either separately or in conjunction with other counties, may appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatoria or other institutions for the treatment of persons suffering from contagious or infectious diseases. Each county may also maintain an infirmary for the care and support of its indigent poor and unfortunate, and all county poor houses shall hereafter be designated and maintained as county infirmaries.

Constitutions of 1835 and 1850

No corresponding provisions were contained in either of the two earlier constitutions.

Constitution of 1908

The rationale for the inclusion of this section in the 1908 constitution was a conviction on the part of the convention that this was in line with modern conditions which demanded the prevention and treatment of contagious diseases as a means of preserving the public health.

Opinions of the Attorney General

Under this provision counties may make appropriations to public hospitals in which contagious diseases are treated even though this may not be the only function of the hospital (Op. Atty. Gen., May 26, 1943, No. 0-779). Non-tax derived funds, if not pledged to some other purpose by the legislature, may be used for a county infirmary (Op. Atty. Gen., April 5, 1957, No. 2931).

Other State Constitutions

Over a dozen state constitutions make some specific mention authorizing counties to provide infirmaries, charitable institutions, asylums, hospitals, poor houses, and penal institutions. Such authorization is either specifically granted in the constitution or authorized to be provided for by general law. Several of the constitutions, like the Michigan constitution, provide for cooperative arrangements among counties. The Model State Constitution is silent on this subject.

Comment

The subject matter of this section could be included in the powers conferred under Section 8.

12. Indebtedness; Limitation

Article VIII: Section 12. No county shall incur any indebtedness which shall increase its total debt beyond 3 per cent of its assessed valuation, except counties having an assessed valuation of 5,000,000 dollars or less, which counties may increase their total debt to 5 per cent of their assessed valuation.

Constitutions of 1835 and 1850

No similar provision was contained in the 1835 constitution. The 1850 constitution as amended (Article IV, Section 49) contained a similar provision though it did not specify that the total debt could not exceed three per cent of the assessed valuation. The 1850 provision, however, contained an additional limitation not found in the present section; viz., that any indebtedness in excess of one-half of one per cent was, in any event, to be authorized by a vote of the electorate.

Constitution of 1908

The original 1908 provision specified that the total debt could not exceed three per cent and deleted the portion the 1850 provision dealing with debt in excess of one-half of one per cent.

This section was amended in 1910. The amendment added that portion of the section which authorized counties of less than five million dollars assessed valuation to increase their debt to five per cent of such valuation.

From time to time some legal questions have arisen as to whether certain specific purposes fall within the limitations of this section but these have not significantly changed the operation of the section.

Other State Constitutions

The majority of state constitutions contain limitations on the amount of county indebtedness. Moreover, the majority of these are tied to some percentage figure of the assessed valuation of the county. Generally these limitations on indebtedness apply to all purposes for which the counties may incur debt. In a number of states, however, the percentage figure may vary depending on the purpose. The Model State Constitution is silent on this subject.

Comment

Inasmuch as there are presently no counties with a state equalized valuation of less than $5 million, consideration might be given to removing this portion of the provision.

13. Removal of County Seat

Article VIII: Section 13. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by 2/3 of the board of supervisors of the county, and a majority of the electors voting thereon shall have voted in favor of the proposed location, in such manner as shall be prescribed by law.

Constitutions of 1835 and 1850

The constitution of 1835 contained no similar provision. The constitution of 1850 contained the same provision (Article X, Section 8).

Constitution of 1908

This section was carried over without change from the 1850 constitution and has not been amended. The provisions of this section are sufficiently clear and explicit as to have raised no significant litigation.

Other State Constitutions

The majority of state constitutions prohibit the relocation of county seats except with approval of the local electorate.

Approval by the "majority" or "two-thirds" of the electorate is the most common requirement. A handful of constitutions authorize the legislature to change county seats, but only by following certain extraordinary legislative procedures such as requiring extraordinary majorities in both houses to pass such laws or other special procedures. The Model State Constitution is silent on this matter.

Comment

Tradition has prevailed in providing the guarantees of this section. Most other constitutions contain such a guarantee. Whether this tradition is now sufficiently ingrained as to make a constitutional guarantee unnecessary is a matter for consideration.

14. Navigable Streams; Permission to Bridge or Dam

Article VIII: Section 14. No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. No such law shall preclude the state from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof.

Constitutions of 1835 and 1850

No provision concerning this subject was contained in the 1835 constitution. The 1850 constitution contained substantially the same provision (Article XVIII, Section 4).

Constitution of 1908

That portion of the section dealing with the requirement for obtaining reasonable conditions and compensation as a means of safeguarding the interests of the counties and other municipalities was not a part of the 1850 version and was added in 1908. This gave the board of supervisors authority to require reasonable compensation in return for the right or franchise granted.

Judicial Interpretation and Opinions of the Attorney General

This section stands as an authorization to counties to maintain navigable streams. The board of supervisors is authorized:

1. To dam streams without the consent of the electors (Op. Atty. Gen., 1916, p. 556).

2. To impose conditions and provisions on the construction of dams such as requiring power companies to construct and maintain roads over them (Op. Atty. Gen., 1916, p. 568).

3. To cause the removal of obstructions in streams if specifically authorized by statute (Op. Atty. Gen., 1930-32, p. 264).

However, it was held with regard to the 1850 provision, and presumably this is still law, that this section did not apply to waters that are part of the state boundary (Ryan v. Brown, 18 Mich. 196) or to streams which had no value as navigable waters (Shepard v. Gates, 50 Mich. 495).

Other State Constitutions

The Michigan constitution appears to be unique in the inclusion of this kind of a provision specifically related to the powers of local government. Generally, the regulation of navigable waters is constitutionally left to the state government, which may or may not divest itself of some of its power by statute. In the absence of such statutes, however, such regulation is exclusively a state function.

15. Townships; Organization and Consolidation

Article VIII: Section 15. The board of supervisors of each organized county may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law.

Constitutions of 1835 and 1850

The constitution of 1835 contained no similar provision. The 1850 constitution (Article X, Section 11) contained a similar provision.

Constitution of 1908

References in the 1850 section relating to highways and bridges were deleted in the 1908 version as it was felt that this subject was already treated in Article VIII, Section 10. In the 1908 version, “consolidate” townships was added, as it was felt that this authorization was needed particularly in the northern counties.

Judicial Interpretation and Opinions of the Attorney General

The provision is specific in granting boards of supervisors the power to consolidate townships and this power cannot be taken away by the legislature (Op. Atty. Gen., 1917, p. 337). On the other hand, general laws which permit disconnection of land from cities and villages under certain circumstances and which may result in a change of boundaries do not violate this provision, as the legislature if also by the constitution empowered to provide by general law for the incorporation of cities and villages. This includes the drawing of boundaries (Tribbett v. Village of Marcellus, 294 Mich. 607; Rood v. City of Lapeert, 294 Mich. 621).

Other State Constitutions

It appears that no other state constitution empowers counties directly to organize or consolidate townships. Generally the power to organize and consolidate townships is left to the legislature which may do so by general law with or without reference to the government of the county.

16. Drainage District Bonds

Article VIII: Section l5a. Any drainage district, established under provision of law, may issue bonds for drainage purposes within such district.

Constitutions of 1835 and 1850

No such provision was included in either the 1835 or 1850 constitution.

Constitution of 1908

This provision was not included in the original 1908 constitution. It is an amendment added pursuant to Joint Resolution 2, 1917, ratified April, 1917.

Judicial Interpretation

Under this section a drainage district is an entity capable of being sued (Royal Oak Drain District Oakland Count Michigan v. Keefe, 87F (2d) 786; a drain district is less of a municipal corporation than a city but exhibits the essential characteristics of a public corporation and is, therefore, an entity capable of being sued (Bloomfield Village Drain District v. Keefe, 119F (2d) 157).

Other State Constitutions

At least a dozen states provide for the creation of drainage districts. Some of these empower such districts to issue bonds, to provide for special assessments, to levy taxes on property or a combination of these methods. All of these provisions are intended to authorize drainage districts to operate as independent fiscal authorities.

Comment

The necessity for this provision might be reviewed.

General Comment to Part A on “Counties”

Delegates to the constitutional convention will have to be exceedingly wary in com-

paring county government in Michigan with county government in other states. It is both easy and fruitful to compare constitutional provisions of the several states and the nation with respect to such matters as the powers, duties, and organization of the executive, legislative, and judicial branches of state government. The model is historically the United States constitution. In dealing with the framework of local government within the states, however, no model exists in the national constitution. The national constitution makes no provision for local governments. It leaves to the states the power to create and deal with local governments. It follows, therefore, that while state constitutions, with variations, follow the national constitutions with respect to the framework of state government and therefore display a degree of uniformity, no such uniformity exists with respect to local government.

Local government organization including county government is in a real sense the creation of each individual state. What has emerged as local government in the states is the product of historical development, tradition, geography, and other factors. To the extent to which these factors vary among the states, the structure of local government varies.

In Michigan, as in the rest of the middle west, the county occupies a middle position in importance. The organization of local government in Michigan ante-dates the constitution of 1835. An ordinance passed by the Congress of the Confederation in 1785 authorized the organization of the western lands into “survey” or “congressional townships” six miles square. The Northwest Ordinance of 1787 authorized the governor of the Northwest Territory, which included Michigan, to create counties and townships and to appoint county and township officials. The organization of counties took place over a period extending from 1815 to 1891. Eighteen counties were organized at or before the time the constitution went into effect. Thirty-nine counties were organized at or before the time the 1850 constitution went into effect.

In 1825 and 1827, respectively, two acts were passed by the legislative council of the territory which effectively fixed the pattern of local government in Michigan. These acts did three things: (1) the township was created as a political unit; (2) the township was made into a unit of representation on the county governing body; and (3) important county and township officials were to be elected. Constitutionally, it was possible for the framers of the 1835, 1850, and 1908 constitutions to ignore the pattern established for the government of the territory. The fact is, however, that not only did they not choose to ignore it but they assumed that this was an irrevocable pattern upon which they created the whole complex of Michigan’s framework of local government. This may explain the absence of provisions relating to county government in the 1835 constitution and it may explain why in the 1850 constitution, as well as in the 1908 constitution, for example, there is no statement which confirms the existence of counties.

The framers of the 1908 constitution did not intend that the basic framework of the 1850 constitution should be changed. Indeed, they made much of the fact that, "In the revised constitution the old framework of government is most carefully preserved" and "no structural changes are proposed." Thus in fact, the provisions governing counties today are the same provisions which have governed the counties of Michigan for over 110 years.

Delegates to the convention now have the opportunity to make some fundamental decisions regarding the character of county government, its powers, its duties, its responsibilities and its relationship to other units of government. The legal framework which currently underlies county government cannot be changed except by explicit language in the constitution to the contrary. In the absence of such language it is accepted and fixed judicial doctrine that counties are creatures of the state. They possess only such powers as are conferred upon them by direct language in the constitution, or by statute. Clearly, in the absence of a direct constitutional grant of power, the counties are wholly subject to legislative discretion. The legislature can create counties and confer power upon them and it can abolish them and curtail their powers at will. The county is a quasi-corporation in that it is primarily an administrative agent of the state. It has corporate entity only insofar as it can be sued in its own name. It is not a wholly public corporation because it does not have powers which it may exercise on its own volition.

What counties in Michigan mayor may not do, except for what is specifically stated in the constitution, is provided for by statute to be found in Part II, Chapters 35 through 46 of Michigan Statutes Annotated (1936). These statutes comprise the general laws governing counties in Michigan. They are comprehensive and explicit. To the extent to which they deal with the details of county organization, administration, powers and duties, any changes in constitutional language and intent must ultimately be reflected in changes in these statutes.

In meeting the needs of county government in a changing society, delegates to the convention should consider the possibility of giving counties home rule powers similar to those granted cities and villages in the 1908 constitution. This would relieve the legislature of the burden of dealing with the details of county government in the same way in which it has relieved the legislature from dealing with the details of city government.

The Michigan constitution provides a basically uniform system of government for all 83 counties in Michigan. In considering what kind of constitutional provision is needed for county government, the delegates to the convention will be faced with several alternatives or combinations of alternatives:

1. Continue the present uniform system of county government.

2. Provide for optional forms of county government.

3. Provide home rule for some or all of Michigan's counties.

Several states provide constitutionally for optional forms of county government. Generally these provisions authorize the legislature to provide optional forms with the option as to which form is to be used being left to the local electorate. Virginia, Montana, New York, North Carolina, North Dakota and Oregon all permit optional law forms of county government, as does the 1961 draft of the Model State Constitution.

A number of states have constitutional home rule for counties, which authorizes the electorate in a county to adopt a county charter. California, Maryland, Ohio, Texas, Missouri, Louisiana, Washington, Florida, Minnesota, New York, Oregon, Alaska, and Hawaii all provide for county home rule for all or certain counties. The 1961 draft of the Model State Constitution also authorizes counties to adopt charters in addition to the provision for optional law forms of organization for counties.

There are several factors which should be considered in relation to county home rule:

1. Should a county home rule provision be restricted to authorizing counties to determine locally the organization of county government?

2. Should a county home rule provision give counties a grant of taxing authority independent of the legislature?

3. Should a county home rule provision give counties the authority to exercise powers and provide services without express statutory authorization?

These questions must be considered in relation to municipal home rule and the possibility of some effective provision for metropolitan area government. For example, if counties are given constitutional authority to provide services, what procedure will be used to reconcile the county's home rule power with the home rule power of cities and villages lying within the county? Questions such as these make the question of what kinds of constitutional provisions should be included for counties one of the more vexatious problems which will confront the convention.

B. TOWNSHIPS

by
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1. Townships, Corporate Character, Suits

Article VIII: Section 16. Each organized township shall be a body corporate, with such powers and immunities as shall be prescribed by law. All suits and proceedings by or against a township shall be in the name thereof.

Constitutions of 1835 and 1850

The 1835 constitution did not contain a similar provision on townships. However, townships were recognized in the 1835 constitution by several references to township officers.

The 1850 constitution contained a provision identical to that found in the present constitution (Article XI, Section 2).

Constitution of 1908

The 1908 constitution continued without change the 1850 provision and there have been no amendments.

Judicial interpretation

The supreme court has held that the legislature has been authorized to confer upon townships powers concerning local matters by general laws and may impose conditions or limitations upon the right or extent of exercise of powers granted.[3]

Other State Constitutions

Townships are organized units of government in 22 states and there are a total of 17,198 organized townships in the United States. In eight of these states townships are called “towns.” The township form of government is found in the six New England states, three middle Atlantic states (New Jersey, New York, and Pennsylvania), eleven north central states, and to a very limited extent in South Carolina and Washington. In the other 28 states the township either does not exist at all or does not operate as an organized unit of government. Between 1942 and 1957 one state, Iowa, discontinued the township as an organized unit of government.[4]

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[3] City of Highland Park v. Dearborn Township, 285 Mich. 440.

[4] U.S. Bureau of the Census, 1957 Census of Governments, Vol. 1, No. 1 and No. 3.

A majority of the 22 states with organized township governments have references in their constitutions, although many do not have a provision similar to Section 16. The Model State Constitution makes no reference to townships.

Comment

See Comment under Section 18, below, this chapter.

2. Local Legislation

Article VII: Section 17. The legislature may by general law confer upon organized townships such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper.

Constitutions of 1835 and 1850

The 1835 constitution did not contain a provision similar to this. The 1850 constitution contained a provision authorizing the legislature to confer these powers upon "organized townships, incorporated cities and villages, and upon the boards of supervisors of the several counties" (Article IV, Section 38). There was no requirement that this be done by general law—thus, special local acts were possible.

Constitution of 1908

The 1908 constitution continued this provision of the 1850 constitution as it applied to townships, with two additions. First, the 1908 provision added the requirement that the legislature act by "general law," and second, the wording "not inconsistent with the provisions of this constitution" was added.

Judicial Interpretation

The Michigan supreme court has held in a case involving the issuance of bonds that townships have only such powers as statutes confer, and are subject to no obligations except such as are derived from statutory provisions.[5] The court also held that the township board is of special and limited jurisdiction, having no power or authority by constitutional mandate, but deriving sole authority from the legislature which is authorized but not compelled by the constitution to delegate certain legislative powers to the township board.[6]

[5] Township of Royal Oak v. City of Pleasant Ridge, 295 Mich. 284.

[6] Township of Dearborn v. Dearborn Twp. Clerk, 334 Mich. 673.

Other State Constitutions

A number of states prohibit special or local legislation dealing with townships. For specific provisions see Index Digest, pp. 1085-1088.

Comment

See Comment under Section 18, below, this chapter.

3. Township Officers

Article VIII: Section 18. There shall be elected on the first Monday of April in each odd numbered year for a term of two years in each organized township one supervisor, one township clerk, one commissioner of highways, one township treasurer, and not to exceed four constables, whose powers and duties shall be prescribed by law. Justices of the peace shall be reclassified as shall be prescribed by the legislature to conform with the provisions of this section providing for biennial township elections.

Constitutions of 1835 and 1850

The 1835 constitution did not include a provision specifying township officials or their election. The constitution of 1850 contained a provision similar to the first sentence of the present provision. However, the 1850 constitution provided for annual election of officials and, in addition to the officers now specified, provided for the election of one school inspector and one overseer of highways for each highway district.

Constitution of 1908

The original 1908 provision was substantially similar to the 1850 provision in that it provided for annual election of all the officials enumerated in the 1850 provision except for the school inspector. This section was amended in 1943 to increase the term of office from one year to two. The 1943 amendment also deleted the original provision for "one overseer of highways for each highway district." The last sentence of the present provision relative to the re-classification of justices of the peace was added by the 1943 amendment. There has been no significant judicial interpretation of this provision as amended.

Other State Constitutions

Most of the states which provide constitutionally for townships do not specify as many constitutional officers as Michigan. The two-year term appears to the most common. The Model State Constitution does not provide for townships or their officers.

Comment

The 1957 Census of Governments indicates that the townships (and towns) in the United States range widely in their scope of governmental powers and organization and that most of them perform only a very limited range of services for predominantly rural areas. However, in some states, the Census Bureau notes that townships are vested with broad powers and perform many functions commonly associated with municipalities. The Census of Governments indicates that in some states there has been a transfer of township functions to the county and a diminution in the importance of the township.

In Michigan in recent years the counties in both rural and urban areas have assumed greater responsibilities in the area of local government services, which might appear to suggest a decline in the importance of townships. However, parallel with this, the legislature has tended also in recent years to give townships the authority to perform a wide variety of "municipal" services—that is, services which previously had been provided only by incorporated cities and villages. The trend in Michigan to increasing the powers and functions of townships is in contrast to many states where township powers have been considerably reduced.

There are substantial differences in the functions provided by townships in rural areas as compared with the functions of townships in urban areas in Michigan. The township in rural areas serves primarily as a unit for election administration and for assessment and collection of the property tax. In urban areas the township provides in addition a wide variety of services such as police, fire, refuse collection and disposal, sewage disposal, zoning, etc.

While in recent years the legislature has provided greater flexibility to townships in terms of functions, the organization of townships has remained the same except for the changes embodied in the charter township act of 1947. And, even the charter township must have the officers specified in Article VIII, Section 18. The board in a charter township may appoint a township superintendent, serving at the will of the board, to act as the administrator of township affairs. For the townships in urban areas the charter township act provides some additional flexibility and, of course, townships in urban areas can incorporate as home rule cities or villages to obtain substantial flexibility. Provisions relating to taxation and indebtedness for capital improvements are also more liberal under the charter township act.

There are a number of questions that might be considered by the convention in connection with the constitutional provisions relating to townships:

1. Should reference to the township be omitted from the constitution, leaving full discretion to the legislature?

2. Should the township be eliminated entirely as a unit of government with services in the rural areas to be provided by the county and in the urban areas by incorporated cities or villages?

3. Should the township remain a constitutional unit of government, but with greater flexibility through eliminating the constitutionally specified officers and substituting some type of "home rule" charter provision or through permitting the legislature to develop optional charter plans?

4. Should townships be granted even broader powers so that those located in urban areas can undertake additional responsibilities or should the ability to incorporate as a home rule city or village be considered an adequate solution?

The decision on these questions will be related to the decisions on municipal home rule, county home rule, and metropolitan area provisions.

Consideration might be given to eliminating the requirement in Section 18 for the election of a highway commissioner in view of the assumption of the highway function by the state and county road commissions since 1931. The reference to reclassification of justices of the peace in Section 18 might be covered more appropriately in Article VII, Section 15, which provides for the election of justices.

4. Public Utility Franchises

Article VIII: Section 19. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

Constitutions of 1835 and 1850

Neither the 1835 nor the 1850 constitution contained a similar provision.

Constitution of 1908

This was a new section in the 1908 constitution. The "Address to the People" by the convention indicated that the purpose of this section was to secure publicity in the granting of franchises by townships and to preserve the rights of townships when granting franchises. This section has not been amended since 1908, nor has there been any significant interpretation by the courts.

Other State Constitutions

No other state has a provision comparable to this section of the Michigan constitution.

Comment

This is one of a number of provisions contained in the constitution relating to public utilities and franchises. A similar provision applies to cities and villages, but the requirement is for a three-fifths vote of the electors (see Article VIII, Section 25).

C. CITIES AND VILLAGES

by

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1. Incorporation

Article VIII: Section 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Constitutions of 1835 and 1850

The 1835 constitution contained no provision for the incorporation of cities and villages. In the 1850 constitution, Article XV, Section 13 states that the legislature shall provide for the incorporation and organization of cities and villages, but without reference to the use of the general law process. Special legislation affecting individual cities and villages was therefore possible. The legislature was further empowered to restrict the power of cities and villages to tax, borrow money, contract debt, and loan their credit.

Constitution of 1908

The provisions of the 1908 constitution, Article VIII, Section 20 (as noted), requiring general law for incorporation of cities, and Section 21, empowering each city to frame, adopt and amend its own charter and to pass all ordinances relating to its municipal concerns, subject to the constitution and general laws of the state, were designed to give cities and villages more home rule than they formerly possessed, and almost exclusive rights in conducting their affairs, in harmony with the constitution and general laws.[7]

Judicial Interpretation

Judicial determinations relative to the status of cities and villages have been numerous. Only a few of the more important are presented here. The basic principle depicting their nature is presented in the following statements:

[7] People v. Sell, 310 Mich. 305.

> Cities are municipal corporations deriving their powers from the state, of which they are agencies for carrying on local municipal government.[8]
>
> The present constitution recognizes, as former constitutions have recognized, the general control of the legislature over cities.[9]

While the authority and powers exercised under "home rule" charters will be discussed in, the next section, an important decision to note here is:

> Under this section of the Michigan constitution and the Home Rule Act (Public Acts, 1909, No. 279) providing for freeholder's charters for cities, the system is one of general grant of rights and powers, subject only to certain enumerated restrictions, instead of the former method of granting new enumerated rights and powers definitely specified.[10]

With respect to tax or debt limits, the court has held:

> The legislature, under this section of the state constitution, has plenary power to regulate the amount of municipal indebtedness and the rate of taxation of cities.[11]

Other State Constitutions

Two states, Ohio and West Virginia, have provisions on incorporation similar to Michigan; i.e., the legislature is empowered to provide for incorporation through general law. Several other states so authorize their legislatures and, in addition, permit general laws to be altered, amended, or repealed; e.g., Virginia, California, Utah, Washington, Idaho.

In many states special or local legislation for incorporation is forbidden; e.g., Alabama, Arizona, Florida, Illinois, Iowa, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, and Wyoming.

Comment

Home rule in Michigan was made possible in 1908 by the constitutional requirement that the legislature through use of general law provide for the incorporation of

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[8] Streat v. Vermilya, 268 Mich. 1.

[9] City of Kalamazoo v. Titus, 208 Mich. 252.

[10] Gallup v. City of Saginaw, 170 Mich. 195.

[11] Harsha v. Detroit, 261 Mich. 586.

cities and villages. This provision is not "self-executing" in nature as it requires positive action on the part of the legislature to enact the necessary legislation. Whether Michigan's non-self-executing type of home rule should be revised is a moot question. More basic aspects of home rule will be commented on in the next section. In general, Section 20 has been adequate and no substantial changes appear necessary. It may be necessary to reconsider the matter of incorporation of cities and villages if optional forms of metropolitan government are to be provided.

Finally, consideration might be given to the possibility of prohibiting general legislative acts, "which revoke, decrease, or limit any power or immunity possessed by the city at the time of their passage or which add burdens to cities or villages, from becoming effective unless approved by the municipality affected."[12]

2. Charters; Laws; Ordinances

Article VIII: Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the Constitution and general laws of this state.

Constitutions of 1835 and 1850

No such provision appears in either the 1835 or the 1850 constitution owing to the absence of any grant of home rule to cities or villages.

Constitution of 1908

The section ratified by the 1908 vote did not include the phrase "to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and... ." This was added by amendment at the November, 1912, election.

Judicial Interpretation

There is a large body of case law dealing with the framing of municipal charters. As the court decisions elaborate at great length on the provisions contained in Section 21, only the basic points are enumerated here.

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[12] Preliminary Report of the Michigan Constitutional Revision Study Commission, Honorable George E. Bushnell, General Chairman, 1942, p. 7, Article VIII.

> In the absence of constitutional provision and restriction, matters of local municipal concern may be determined by the citizens of the municipality.[13]
>
> Among the powers which the cities could assume under this section, and Section 20 of the state constitution and Public Acts 1909, No. 279, as amended are: the right to legislate as to the salaries of its officers, their subordinates and employees;[14] the right to determine what their bonding limit shall be up to a maximum of eight per cent of their real personal property;[15] the right to provide for the retirement of civil servants on pension and the establishment of a pension fund.[16]

Even with respect to court review, the state supreme court has held that:

> The court may not interfere with municipal authorities in the exercise of their discretionary duties, as long as their action is not contrary to law or sound public policy.[17]
>
> Every municipal charter is subject to the constitution and general laws of the state.[18]

Other State Constitutions

The power to frame municipal charters has been granted to political subdivisions generally by 20 states. Four other states grant this power to specified municipalities. There is usually added the provision that such power is subject to the constitution and laws of the state. This power can be either self-executing, as in Ohio, or non-self-executing, which requires state enabling legislation as in Michigan.

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[13] Harper v. City of Saginaw, 270 Mich. 256.

[14] Burton v. Detroit, 190 Mich.

[15] City Commission City of Jackson v. Vedder, 299 Mich. 291.

[16] Bowler v. Nagel, 228 Mich. 434.

[17] Veldman v. City of Grand Rapids, 275 Mich. 100.

[18] City of Hazel Park v. Municipal Finance Commission, 317 Mich. 582.

Comment

It is a well recognized legal concept that municipalities are subordinate units of the state government and, in the absence of specific constitutional limitations, the legislature has plenary power over all local units of government, including cities and villages. The 25-year period immediately preceding the adoption of the constitution of 1908 marked the high point of legislative interference with local affairs in Michigan.

Embodied in Article V, Section 30 (prohibiting special or local acts) and Article VIII, Sections 20 to 25 are the far-reaching "home rule" provisions which in 1908 represented a major step forward and even today are found in only about half of the state constitutions.

The three primary objectives of municipal home rule are:

1. To prevent legislative interference with local government.

2. To enable cities to adopt the kind of government they desire.

3. To provide cities with sufficient powers to meet the increasing needs for local services.[19]

Attempts have been made to classify home rule practices in the various states, but the categories established generally are meaningless apart from the specific provisions appearing in a particular constitution. The Michigan provisions are referred to as non-self-executing, constitutional home rule, as distinguished from self-executing home rule where the constitution actually spells out the procedure for organization and grants specific powers to local units. In the face of long-standing and much used home rule acts passed by the Michigan legislature pursuant to the mandate in Section 20, this distinction has little meaning today. More important are the differences of opinion among proponents of home rule relative to the grant of powers.

This phase of home rule—the autonomy of local units in the exercise of powers and the carrying out of functions relative to local affairs-bears further examination. While a radical change in Michigan's home rule system presumably is unnecessary, there are some improvements which could be made. One of these lies in the area of granting broader fiscal authority and taxing power at the local level. Another is the possibility of a more effective delineation of matters of statewide and local concern. The question of legislative encroachment continues to be vexatious.

The convention may wish to give consideration to the following methods that have been suggested to strengthen municipal home rule—

[19] Rodney L. Mott, "Home Rule For America I s Cities ,II American Municipal Associations, Chicago, 1949, p. 7.

1. The insertion of a requirement that liberal construction of home rule powers be made in all cases not in specific conflict with state law.

2. Providing for exclusive jurisdiction by cities and villages over matters of local governmental structure, personnel and administration.

3. Strengthening the concept of state and local sharing of regulatory functions by saving local powers unless there is specific pre-emption of authority by the state.

3. Power to Acquire and Maintain Parks, Hospitals, Etc.

Article VIII: Section 22. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.

Constitutions of 1835 and 1850

No such provision is to be found in the two earlier constitutions. Under both the 1835 and 1850 constitutions cities and villages had only such powers as were conferred by the legislature.

Constitution of 1908

This section was first included in the 1908 constitution. It presumably was placed here in accordance with and as a supplement to the home rule power.

Judicial Interpretation

There has been considerable litigation over the exercise of legislative discretion in conferring local powers on the municipalities as it relates to the above objects.

> This provision is not self-executing but depends upon legislative enactment to give it effect.[20]
>
> In conferring local powers the legislature may give extensive capacity to acquire or hold property for local purposes, or it may confine the authority within narrow bounds, and what it thus confers it may enlarge, restrict or take away at pleasure.[21]

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[20] Detroit v. Oakland Circuit Judge, 237 Mich. 446.

[21] People ex rel. Detroit Park Commissioner v. Common Council of Detroit, 28 Mich. 228.

Under this section and Section 23 of the state constitution, a city may acquire and operate a power plant outside its limits for the purpose of supplying itself and its inhabitants with electricity.[22]

Other State Constitutions

Several states in their provisions for general powers to municipalities merely stipulate that the legislature may grant them health and welfare powers (see Missouri constitution, Article IV, Section 37). Or note the Ohio provision that municipalities have the authority to adopt and enforce within their limits local police, sanitary and other similar regulations not in conflict with general laws (Ohio constitution, Article XVIII, Section 3).

A more sweeping general grant is that provided by Massachusetts; namely, a municipality may exercise such powers, privileges, and immunities as are deemed necessary or expedient for the regulation, and government thereof so long as they are not repugnant to the constitution.

Comment

Whether it is necessary to enumerate the array of activities or facilities listed in this section is a debatable question. It may be desirable to reword this section in light of whatever revisions are made with respect to intergovernmental arrangements at the local level, particularly in the metropolitan areas.

4. Public Utilities; Power to Own and Operate

Article VIII: Section 23. Subject to the provisions of this constitution, any city or village may acquire, own and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof; and may also sell and deliver heat, power and light without its corporate limits to an amount not to exceed 25 per cent of that furnished by it within the corporate limits, and may also sell and deliver water outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines without the municipality within such limits as may be prescribed by law; Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than 25,000 inhabitants.

[22] City of Traverse City v. Blair Township, 190 Mich. 313.

Constitutions of 1835 and 1850

No reference to owning or operating a public utility by a city or village appears in either the 1835 or 1850 constitutions.

Constitution of 1908

This provision is new, appearing for the first time in the 1908 constitution. An amendment passed in 1944 deleted the 25 per cent restriction on the sale and distribution of water outside city limits which had been contained in the original 1908 provision.

The power granted municipalities to sell and deliver water, heat, power and light without their corporate limits is designed to prevent the duplication of plants in contiguous localities and to allow the extension of the benefits of such improvement to territory not sufficiently populous to warrant the establishment of such activities as either a public or a private enterprise.

Other State Constitutions

Two states, Arizona and Oklahoma, permit municipal corporations to engage in any business or enterprise which may be engaged in by person, firm, or corporation with respect to ownership and operation of public utilities by franchise. The two most detailed constitutional provisions, similar in nature to that of Michigan, are provided by California and Ohio. California has no limit on the amount of service (i.e., heat, water, power, light) which may be sold outside the seller's (municipal) boundaries. Ohio does place a limit on the amount which can be sold but permits a 50 per cent ratio, whereas the Michigan constitution restricts such sales, except of water, to 25 per cent of the amount used within its boundaries. The Michigan constitution also confers on the legislature the power to determine the extent to which a municipal transportation system may operate outside its corporate limits.

Comment

The courts have construed this section to mean that a city or a village cannot engage in any business but must restrict itself to public utilities per se.

The requirement of a minimum population of 25,000 as a prerequisite for the operation of transportation facilities may be too restrictive under certain circumstances. Smaller cities may be forced in times of emergency to undertake such services for their residents because of a lack of interest by private enterprise.

5. Public Utilities; Bonded Indebtedness

by
Miller, Canfield, Paddock and Stone
Stratton S. Brown

Article VIII: Section 24. When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, That such mortgage bonds, issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village, but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than 20 years from the date of the sale of such utility and franchise on foreclosure.

Constitutions of 1835 and 1850

Neither the 1835 nor 1850 constitution contained comparable provisions.

Constitution of 1908

This section was included in the 1908 constitution as a part of the grant of home rule powers to cities and villages. This section has not been amended.

Judicial Interpretation

This section of the state constitution provides that any city or village which is authorized to acquire and operate a public utility may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law, provided that the mortgage bonds do not impose any liability upon the city or village, but are secured only upon the property and revenues of the public utility, including a franchise thereon. This constitutional provision has had a most curious history. In Light and Power Company v. Village of Hart, 235 Mich. 682, the supreme court held that this section was self-executing and was not dependent upon enabling legislation or charter provisions. However, in City Commission v. City Attorney, 313 Mich. 644, the supreme court apparently reversed its decision and held that this section was not self-executing and that specific authority for this must be found in the city home rule act and in the local city charter. The city home rule act at the time of this case, and now, contains as a permissive grant of power to cities, the right to issue mortgage revenue bonds, but the charter of the City of Sault Ste. Marie (the city involved in this case) did not contain this power as the city had not written it into its charter. The supreme court, in addition, stated that a general

provision in the city charter to the effect that the city would have all of the powers that a city could have under the provisions of the home rule act was not broad enough to incorporate this power in the city charter. In Gentzler v. Constantine, 320 Mich. 394, the supreme court assumed that this section of the state constitution was not self-executing but used some rather peculiar language, that possibly could be construed as throwing a cloud on the decision in the Sault Ste. Marie case. At least for the present, it must be assumed that the provisions of Article VIII, Section 24, of the state constitution are not self-executing and that it is dependent upon appropriate provisions in the various home rule acts and in the city or village charter. In Light and Power Company v. Village of Hart, supra, the court also states that the legislature may not by law place a limit on the amount of mortgage revenue bonds that can be issued. In Gas and Electric Company v. Dowagiac, 278 Mich. 522, the supreme court held that the question of granting a franchise and issuing mortgage revenue bonds, which must be submitted to the electors, is not a proposition which is restricted to tax-paying electors under the provisions of Article III, Section 4, of the state constitution. In this case the court further construed this section of the constitution as not requiring the exhaustion of the general obligation bonding power of the city before mortgage revenue bonds could be issued.

The supreme court in several cases has held that Section 25 of Article VIII of the constitution must be read together with Section 24. Section 25 of Article VIII of the constitution requires, among other things, a three-fifths vote of the electors of the city or village as a condition precedent to either (a) the acquiring of a public utility, or (b) the granting of a public utility franchise. As a result, in order to issue mortgage revenue bonds under Section 24, it is necessary to submit to the electors the question of granting the franchise for the mortgage revenue bonds to meet the requirements of Article VIII, Section 25, and, if the city or village has not voted to acquire the utility previously, the proposition to acquire also must be submitted to the electors.

Other State Constitutions

A review of the constitutional provisions from other states having constitutional provisions for city and village home rule indicates that only the states of Missouri and Utah have specific authorization for revenue bonds or mortgage revenue bonds for public utilities in their constitutions.

Comment

As a practical matter, mortgage revenue bonds in the recent past have been issued in Michigan only in connection with electric utilities. Water system and improvements thereto have been financed since 1933 under the provisions of the revenue bond act (Act 94, Public Acts of Michigan, 1933, as amended). Moreover, all electric utilities improvements since 1954 have been financed by revenue bonds issued under the provisions of the revenue bond act as a result of the amendment to the

revenue bond act enacted in 1954, which included electric utilities as improvements which can be financed by revenue bonds. The financing of constitutional utilities such as described in Article VIII, Section 23, of the constitution (utilities for supplying water, heat, light, power, and transportation) under the revenue bond act was upheld by the Michigan Supreme court in Young v. Ann Arbor, 267 Mich. 241, and many later cases. The procedures provided by the revenue bond act, which place a lien only on the revenues of the utility and do not involve granting a franchise are much simpler. It is not necessary to have an election to grant a franchise and it is not necessary to execute a trust indenture to secure the bonds. Moreover, the bonds can be issued for a considerably longer period of time (up to 40 years) under the revenue bond act. Mortgage revenue bonds can be issued for not more than 20 years because that is the maximum length of time that the franchise to the bondholder can be granted under the provisions of this section. In view of the foregoing, and in view of the rather checkered history of this constitutional provision in the supreme court, Section 24 of Article VIII serves no useful purpose and consideration should be given to eliminating this provision.

6. Elective Franchise; Taxation; Public Utilities

by
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Article VIII: Section 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Constitutions of 1835 and 1850

The constitution of 1835 contained no comparable provisions.

In the constitution of 1850 the legislature was authorized to confer on cities and villages such powers of a local, legislative and administrative character as they deemed proper (Article IV, Section 38) and to restrict their powers of taxation, borrowing money, contracting debt and loaning their credit.

Constitution of 1908

The “Address to the People” of the 1907-08 convention states in connection with this section:

> The transfer of the powers of legislation from the state legislature to the people of the municipalities or their representatives necessitated the imposition of certain checks and prohibitions designed to secure conservative action on the part of those to become responsible for the future conduct of such affairs.

The major change resulting from this provision of the 1908 constitution was to take from the state legislature the authority to provide by statute for the matters referred to in this section. This section has not been amended.

Judicial Interpretation and Opinions of the Attorney General

The supreme court has held that a city charter providing for electing city commissioners by the proportional representation system by the "Hare system" of proportional and preferential voting violated this section.[23]

There have been a series of decisions and opinions defining the prohibition of lending credit or taxing for other than a public purpose. The court has pointed out that the term "public purpose" cannot be given a definite meaning that will be applicable under all circumstances.[24]

The courts have held that municipalities cannot exercise power of taxation in aid of private corporations and the attorney general has ruled that municipalities cannot lend their credit in aid of private enterprise.[25]

In regard to "public utilities," the court has held that the term is confined to "public utilities for supplying water, light, heat, power and transportation" and that garbage disposal and sewage treatment systems are not public utilities within the meaning of this section.

The court has pointed out that this section does not give the electors power to grant franchises, but transfers to them the power formerly held by the common council to make a franchise irrevocable. Insofar as revocability of franchises is concerned, this section limits the legislature in authorizing franchises and the municipality in granting franchises.[26]

Other State Constitutions

The portion of this section specifying that "no city or village shall have power to abridge the right of elective franchise" appears to be unique among state constitutions.[27]

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[23] Watt1es v. Upjohn, 211 Mich. 514.

[24] Hays v. City of Kalamazoo, 316 Mich. 443.

[25] See M.S.A., Vol. 1, pp. 394 and 395; 1959 Cumulative Supplement, pp. 163 and 164.

[26] See M.S.A., Vol. 1, pp. 394 and 395; 1959 Cumulative Supplement, pp. 163 and 164.

[27] Index Digest, p. 72.

A number of states generally prohibit levying taxes for other than public purposes. Cities are specifically prohibited from appropriating money or lending credit for any company, association or corporation in a sizeable number of states.

The provision of this section on acquiring public utilities and granting irrevocable franchises seems to be unique among state constitutions.[28]

Comment

The prohibition on abridging the right of elective franchise could be covered either in Article III on the elective franchise, or consideration could be given to leaving this matter to legislative enactment in the home rule act. The prohibition on taxing and lending credit might be covered more appropriately in a general prohibition for all governmental units in the Article X on finance. The provision authorizing women taxpayers to vote is obsolete and could be omitted.

The constitution of 1908 contains several other sections dealing with public utility franchises. Section 19 of this article prohibits townships from granting irrevocable public utility franchises without approval of a simple majority of the voters while Section 25 requires a three-fifths vote for cities and villages. Sections 28 and 29 also relate to public utility franchises. See the Comment section under Article VIII, Section 28 concerning these various provisions.

[28] Index Digest, p. 90-91.

D. GENERAL PROVISIONS

by

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1. Highways; Powers of Supervisors; County or District Road System; Tax Limitation

Article VIII: Section 26. The legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by the state and by the counties and townships thereof and by road districts; and may authorize counties or districts to take charge and control of any highway within their limits for such purposes. The legislature may also by general law prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts; may provide for county and district road commissioners to be appointed or elected, with such powers and duties as may be prescribed by law; and may change and abolish the powers and duties of township commissioners and overseers of highways. The legislature may provide by law for submitting the question of adopting the county road system to the electors of the counties, and such road system shall not go into operation in any county until approved by a majority of the electors thereof voting thereon. The tax raised for road purposes by counties shall not exceed in anyone year five dollars upon each one thousand dollars of assessed valuation for the preceding year.

Constitutions of 1835 and 1850

The 1835 constitution had no provision similar to this. The constitution of 1850, as amended in 1893 and 1899, had a provision (Article IV, Section 49) somewhat similar to the present provision through which the state legislature was given much the same authority to authorize county or township commissioners to take charge and control of any highways within their limits. The tax to be raised in anyone year for such purpose could not exceed $2.00 per $1,000 of assessed valuation. Other limitations were placed on indebtedness as well.

Constitution of 1908

The original provision of the 1908 constitution increased the 1850 limit of taxation for road purposes from $2.00 to $3.00 per $1,000 of assessed valuation and added authorization for the legislature to change and abolish the powers and duties of township commissioners and overseers of highways.

The provision was amended to its present form in 1917. The 1917 amendment added to the original 1908 provision authority for the legislature to provide for the performance of these highway functions by the state as well as by counties, townships and road districts. The 1917 amendment also increased the tax limitation from $3.00 to $5.00 per $1,000 of assessed valuation.

Judicial Interpretation

The court has held the legislature has power to make the state highway commissioner's decision final as to the necessity for repairing a highway and that this section confers broad powers on the legislature respecting highways.[29] The legislature has power to delegate to the county boards of supervisors power to appoint county road commissioners.[30]

Opinions of the Attorney General

The attorney general has held that the county road commission is not responsible to the board of supervisors, nor has the board any authority or control over the road commission, except as to appointment, removal and audit of accounts as provided by law.[31] The attorney general has also held that the voters cannot increase the millage for road purposes in excess of the maximum provided for in this section.[32]

Other State Constitutions

California and Missouri appear to be the only states with a provision similar to that contained in the Michigan constitution except for the tax limitation at the end of the section. The Missouri constitution limits the tax to $3.50 per $1,000 of assessed valuation while the California constitution requires approval by a majority of two-thirds of the qualified electors of a district to set up a county road system without stipulating a tax maximum.

Several states authorize the legislature to provide for the formation of road districts, either in specified counties (Alabama), or by general law (Louisiana, Washington).

Comment

The grant of authority to the state legislature contained in Section 26 is plenary and needs little amplification. In order to avoid doubt as to its authority in related vital functions, the word "drains" might be added after "culverts." As the township

[29] Attorney General v. Bruce, 213 Mich. 532.

[30] Matthews v. Montgomery, 275 Mich. 141.

[31] Op. Atty. General, May 23, 1957, No. 2945.

[32] Op. Atty. General, August 13, 1957, No. 3053

no longer functions as a road district the reference to township commissioners and overseers of highways is superfluous. However, deletion of this reference should be made in conjunction with revision of Section 18, so as to remove any reference to the township commissioner of highways.

Consideration might be given to reappraisal of the limitation of $5.00 per $1,000 of assessed valuation for road tax purposes in the light of the use of gas and weight taxes for some of these purposes. Possibly some other type of control could be substituted which would not require the stipulation of a fixed amount imbedded in the constitution.

2. Highways; Vacation; Alteration

Article VIII: Section 27. The legislature shall not vacate nor alter any road laid out by commissioners of highways, or any street, alley or public ground in any city or village or in any recorded town plot.

Constitutions of 1835 and 1850

There was no comparable provision in the 1835 constitution. A provision quite similar to this one appears in the 1850 constitution, Article IV, Section 23. The 1850 provision had an added, limitation preventing the state legislature, by private or special law, from selling or conveying any real estate belonging to any person.

Constitution of 1908

The 1908 provision placed the prohibition against sale of real estate in Article V, Section 31 and added herein “alley or public ground” to the prohibition against vacating or altering any street. Section l7 is in the nature of a provision which should be considered in conjunction with the preceding provision, Section 26. There has been little controversy and court action based on this provision.

Other State Constitutions

At least 25 states have similar provisions forbidding the altering or vacating of roads, streets or alleys laid out by highway commissioners. Few refer to such limitation specifically as recorded in a “town plat.”

Comment

As this section enjoins the legislature from interfering with essentially a matter of local concern, there is little to consider here.

3. Highways, Streets, Etc.; Use by Utilities; Control

Article VIII: Section 28. No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township; nor to transact a local business therein without first obtaining a franchise therefor from each city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.

Constitutions of 1835 and 1850

No such provision appears in either the 1835 or 1850 constitution. The authority granted cities, villages and townships by this section previously was exercised in its entirety by the state legislature.

Constitution of 1908

This provision was new in the 1908 constitution. Professor John A. Fairlie, a delegate to the convention, stated that:

> One of the most important sections in the revised constitution is that reserving to cities, villages, and townships the reasonable control of their streets and public places, and more specifically requiring the consent of the local authorities for the use of the highways or streets for any public utility. ...(This) provision serves to prevent the legislature from granting rights in the public streets of a local district.[33]

This section has not been amended.

Judicial Interpretation

The courts have held that in adopting this provision the people took from the legislature certain powers over municipalities and vested in municipalities reasonable control over their streets.[34] The reasonable control of their streets granted to municipalities may not be taken away by the courts, by individuals, by administrative bodies or by the legislature.[35] The court has also held-that the term “corporation

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[33] John A. Fairlie, The Michigan Constitutional Convention, May, 1908, p. 10.

[34] Red Star Motor Drivers Assn. v. Detroit, 234 Mich. 398.

[35] Highway Motbrbus Co. v. City of Lansing, 238 Mich. 146.

operating a public utility" includes municipal corporations and municipal utilities are therefore subject to the provision of this section.[36] There have been a substantial number of decisions regarding what constitutes "reasonable control" of streets and the use thereof by public utilities.[37]

Other State Constitutions

Municipalities are usually vested with the power to control use of their streets by public utilities. Typical constitutional provisions are found in the constitutions of Arizona (Article XV, Section 3); California (Article XI, Section 19); and Colorado (Article XXV).

Comment

The basic authority of a municipality over the control of its streets, alleys, and other public places is made specific by this section. Such controls are generally considered desirable, except of course, as the exercise of such controls may conflict with a more basic responsibility of the state for the general welfare. It is conceivable that conflicts may arise in connection with provisions for metropolitan agencies, should home rule powers be granted to either counties or newly formed jurisdictions within the framework of a revised constitution. More will be said about this issue in connection with Section 31.

This section contains only a portion of the numerous provisions in Article VIII relating to public utilities which include:

1. A public utility must obtain a franchise from each city, village and township before transacting a local business therein (Section 28).
2. No public utility has the right to use the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township (Section 28).
3. No franchise shall be granted by any municipality for more than 30 years (Section 29).
4. No such public utility franchise shall be granted which cannot be revoked at the will of the city or village (Section 25) or township (Section 19), unless approved by the electors—a simple majority in townships (Section 19) and a three-fifths majority in cities and villages (Section 25).
5. Finally, there are a series of provisions relating to the power of cities and villages and metropolitan districts to own, acquire, operate, and incur indebtedness for public utilities (Sections 23, 24, 25, and 31).

[36] Bay City Plumbing and Heating Co. v. Lind, 235 Mich. 455.

[37] See M.S.A., Vol. 1, pp. 398-402 and 1959 Cumulative Supplement, pp. 166-170.

4. Duration of Franchise

Article VIII: Section 29. No franchise or license shall be granted by any municipality of this state for a longer period than thirty years.

Constitutions of 1835 and 1850

Neither the 1835 nor 1850 constitution contained a similar provision,

Constitution of 1908

This section was new to the 1908 constitution. The purpose of including this provision was "to guard against the grant of franchises beyond the life of one generation, even by a vote of the present inhabitants."[38]

Judicial Interpretation

This section relating to "municipality" does not include counties.[39] This section is not a grant of authority to issue franchises, but rather establishes a time limit on franchises which the legislature may authorize municipalities to grant.[40]

Other State Constitutions

The most common limitation on the granting of public utility franchises found in other state constitutions is that the franchise is not to be exclusive. However, several states also specify time limits: e.g., Kentucky, 20 years; Arizona and Oklahoma, 25 years; and Alabama and Virginia, 30 years.

5. Ports and Port Districts

Article VIII: Section 30. The legislature may provide for the in corporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

Constitutions of 1835 and 1850

No comparable provision appeared in either the 1835 or 1850 constitution.

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[38] John A. Fairlie, The Michigan Constitutional Convention, May, 1908, p. 10.

[39] Wayne County Prosecuting Attorney v. Grosse Ile Bridge Co., 318 Mich. 266.

[40] City of Niles v. Michigan Gas and Electric Co., 273 Mich. 255.

Constitution of 1908

This section was not a part of the original 1908 constitution. It was added by amendment as a new section at the April, 1923, election. There have been no significant court decisions.

Other State Constitutions

Several states provide for the incorporation of ports and port districts and authorize the state legislature to provide by general law for their operation. Louisiana has very detailed provisions in its constitution with respect to organization and financing.

The constitutional provision itself does not appear to have created any problems which may have been encountered by port districts in Michigan. The constitutional grant of authority to the legislature is comprehensive.

In 1945 the voters approved an amendment to Article X, Section 14 relating to the general prohibition against internal improvements. Harbors of refuge and waterways were added to the improvements specified in the amendment, as activities in which the state could engage. Consideration might be given to adding "ports" to the specified improvements. If this were done, this section would appear to be unnecessary.

6. Metropolitan Districts; Incorporation; Purposes; Powers

Article VIII: Section 31. The legislature shall by general law provide for the incorporation by any two or more cities, villages or townships, or any combination or parts of same, of metropolitan districts comprising territory within their limits, for the purpose of acquiring, owning and operating either within or without their limits as may be prescribed by law, parks or public utilities for supplying sewage disposal, drainage, water, light, power or transportation, or any combination thereof, and any such district may sell or purchase, either within or without its limits as may be prescribed by law, sewage disposal or drainage rights, water, light, power or transpiration facilities. Any such districts shall have power to acquire and succeed to any or all of the rights, obligations and property of such cities, villages and townships respecting or connected with such functions or public utilities: Provided, That no city, village or township shall surrender any such rights, obligations or property without the approval thereof by a majority vote of the electors thereof voting on such question. Such general law shall limit the rate of taxation of such districts for their municipal purposes and restrict their powers of borrowing money and contracting debts. Under

> such general law, the electors of each district shall have power and authority to frame, adopt and amend its charter upon the approval thereof by a majority vote of the electors of each city, village and township, voting on such question, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this State.

Constitutions of 1835 and 1850

No provision empowering the creation of metropolitan districts appeared in either the 1835 or 1850 constitution.

Constitution of 1908

The present provision was added by amendment in 1927, having been ratified at the April election. The action made possible by Section 31 is not self executing. The legislature was merely authorized to enact general laws to establish districts as therein mentioned.

Other State Constitutions

Florida, while not providing in its constitution for metropolitan districts as such, does provide for a county home rule charter which may be adopted by the electors of the county. Under such a charter the powers and the functions of any municipal corporation or other governmental unit in the county may be transferred to the board of county commissioners. This is applicable only to Dade County in which the city of Miami is located. (See Article VIII, Section 11).

California permits its counties to provide many municipal functions to incorporated or unincorporated municipalities located within their boundaries. Missouri also has a similar provision for home rule counties. New York's constitution permits transfer of any function of local government to or from cities or counties but requires a majority of all votes cast thereon.

The Model State Constitution provides that "Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with anyone or more other governments."

Comment

In spite of the tremendous proportions of Michigan's metropolitan problems (almost half of Michigan's population in 1960 lives in one metropolitan area), there are only two sections in Michigan's constitution which provide in some way for meeting these problems. Section 2, Article VIII states that:

> . . . when any city has attained a population of 100,000 inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing such city into a separate county.

The second provision is Section 31, under consideration here.

No action has been taken by the state legislature based on Section 2. Few and relatively inconsequential districts have been formed as a result of the provisions of Section 31. There is, therefore, in the present constitution, no effective provision for meeting the problems of government in Michigan's metropolitan areas. It appears essential to provide such a provision in the constitution.

There are several approaches which might be considered: expanding county authority and streamlining its organization; federated metropolitan government; stronger and well-defined metropolitan districts; etc. Rather than having any particular approach "frozen" into the constitution, it might be preferable to empower the legislature to provide for metropolitan governments, with the local electorate to have a voice in their framing and adoption.

The matter of municipal home rule has a bearing on the question of metropolitan area government. While Michigan has been reasonably successful with the present home rule system, the relationships between metropolitan area authority and municipal authority must be reassessed.

The financial base for local and area-wide operations must also be examined in order to provide more adequately for the financing of government at these levels.

A basic principle to be observed in fashioning new provisions for a challenging set of new problems brought about by the concentration of population in Michigan's urban centers is that considerable flexibility must be provided by the constitutional provision and the subsequent enactment of legislation permitted thereby. The metropolitan problems in Michigan vary from one area to another and no single pattern may be suitable for all areas. Further, the future patterns and problems of metropolitan growth may require different solutions than are entailed by the present problem.