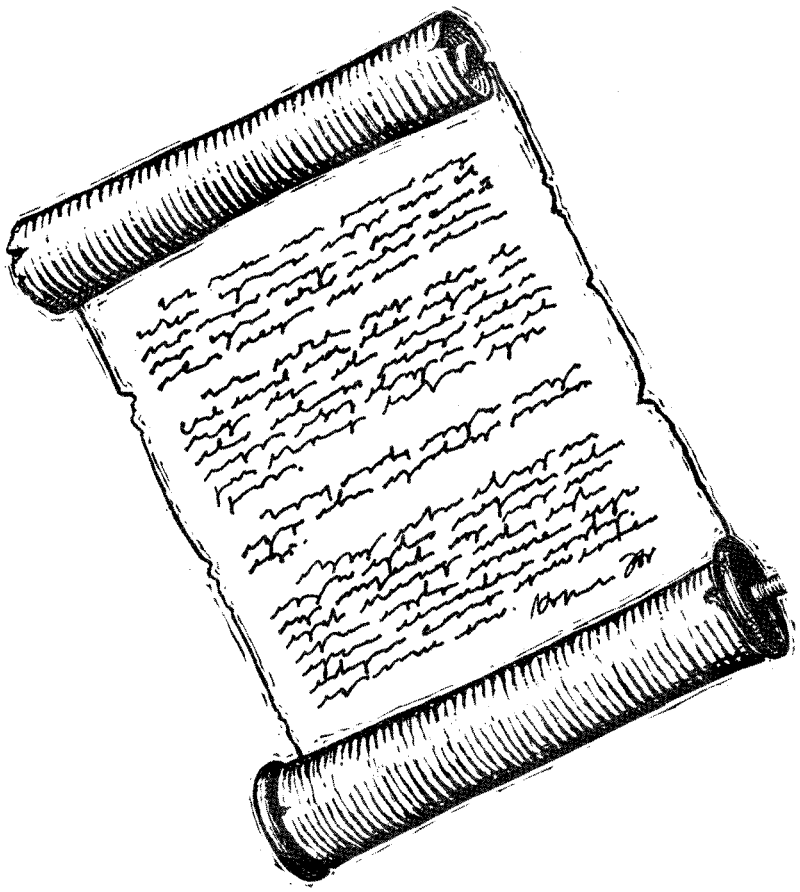
WAYNE COUNTY CHARTER ISSUES . . .

THE HISTORICAL AND PRESENT ROLE OF OUNTY GOVERNMENT IN MICHIGAN

By Kenneth VerBurg



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1666 City National Bank Building
Detroit, Michigan 48226

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THE HISTORICAL AND PRESENT ROLE OF COUNTY GOVERNMENT IN MICHIGAN

by

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TABLE OF CONTENTS

Page

INTRODUCTION 1

I. DEVELOPMENT OF COUNTY GOVERNMENT 1

Development of counties in England 1
Development of the county in America 3
The Virginia county 3
The New England county 3
The New York model 4
The Pennsylvania approach 4
The westward spread 4
Development of county government in Michigan 5
The Constitution of 1835 6
The 1850 Constitution 6
The 1908 Constitution 6
The present era of Michigan county government 7
Optional forms of county government 7
Liberal construction clause 7
Reapportionment 8

II. STATE AND COUNTY RELATIONSHIPS 9

Influences for change in relationships 9
Changing federal-state relations 9
Technological advances 10
Varied patterns of state-county relations 10
State takeover of functions 10
Joint state-county programming 10
Parallel state programming 10
Earmarked financial assistance to counties 11
Local administration of state rules 11
Tax collector for local units 11
Supervision of problem areas 11
Regulations and prescriptions 12
County-federal relations 12
The future of state-county relationships 13
Constitutional limit on state mandates 13
Tax policies and spending limits 13
Changes in federal government policies 14

III. MUNICIPAL RELATIONSHIPS 14

IV. THE NATURE OF A COUNTY CHARTER 15

The Michigan dilemma 16
Allocation of powers and duties 16
Organizational flexibility 17
Implications for the charter commission 17
The limited home rule view 17
The broadened view of home rule 18
A closing observation 18

INTRODUCTION

The Wayne County Charter Commission has before it the task of preparing a basic governing document for the citizens of the county. If it is adopted, the charter will become one of the major documents guiding county government for perhaps decades to come.

Some of the charter commissioners have had extensive experience in and knowledge of county government in Michigan. Other commissioners are receiving their introduction to issues and questions that pervade county government in this state.

Because of the wide range of experience among the charter commissioners, therefore, we seek to provide some perspectives about county government--how it came to be and how its purpose and function evolved over time. Neither space nor the time allotted to the charter commissioners allows this paper to be as comprehensive as we and the commissioners might like. We believe, though, that a brief background paper can be helpful in providing some focus to the information that will soon begin to cascade on the commission.

The first section of this paper will deal with the beginnings of county government and its development in the U.S. and in Michigan. The second and third segments will review some of the ways Michigan state government relates to the counties in the state and how counties relate to the municipal jurisdictions within them. Finally, the paper discusses the nature of the charter in the context of county government.

I. DEVELOPMENT OF COUNTY GOVERNMENT

Development of counties in England

The fact that all the states of the union except two have county governments is a strong testimony for the English influence on our own political institutions.[1] Therefore, understanding the role of the county in English history is helpful in understanding how counties developed in the United States.

One source traces the roots of county government in England to 603 AD.[2] The reference is to King Ine of Wessex who subdivided his domain (what is

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[1] The states without counties are Rhode Island--a state that, itself, is scarcely larger than many counties--and Connecticut, which dissolved the county form of government a decade or so ago. Alaska calls its counties boroughs. Louisiana calls its counties parishes.

[2] Reorganizing Our Counties, Governmental Research Bureau, Cleveland, Ohio, 1980.

now southern England) into scirs, later called shire but meaning share. The king appointed agents, called heretogas, to act on behalf of the king especially in judicial matters, a governmental function that kings often exercised.

With the passage of time, the bureaucracy began to expand and about two centuries later the office of shire-reeve was firmly in place. The shire-reeve, an executive officer in today's language, is the predecessor of the modern-day sheriff.

In later centuries, although the shire-reeve was intended to be subordinate to the council of the counts, shire-reeves gradually began taking over the administrative affairs of the counte or county. The counts found themselves preoccupied with military affairs and with national concerns surrounding the office of king.

The responsibilities of the shire-reeve continued to expand. These officers were responsible not only for collecting and disbursing the king's funds, but also became involved in local defense concerns and conscripting personnel for the national army. In addition, shire-reeves began to exercise control over the construction and maintenance of roadways, bridges, and drainage ditches.

The signing of the Magna Carta in 1215, however, put some brakes on the growing autonomous authority of these officials. In that document, King John agreed to make the shire-reeves and other officials subject to written laws rather than their own individual standards and whims.

During the next century, local freeholders (resident landowners) began electing justices of the king's peace. This body--a kind of forerunner of the county board--met in quarterly sessions to decide matters of county concern. The shire-reeve typically presided at these meetings. As counties began to develop other offices to exercise administrative duties, however, the numbers of justices of the peace gradually declined--to as few as one in some counties. By 1888 in England, the justices of the peace had little power other than a share of the administration of the police power.

What do we observe from this brief overview? For one thing, it is clear that the county evolved as a means of extending the power of the king to the hinterlands. In a highly centralized system of government, and especially during a time when communications and travel were difficult and slow, the form of governmental organization obviously had to produce compliance to the king's commands regarding taxes, land policy, justice, military affairs, and other matters--hence, the shire-reeves.

We also note that over time a democratic spirit and a demand for rule by written and defined law began to arise. Citizens began to reject what was probably the unbridled exercise of power in the name of the king by local appointed officials.

What is missing from the foregoing description is any discussion of the parish, a form of town government in the English villages and hamlets. Parish governments dealt with both civil and religious matters that fell outside the policies established by the king and the other officials. The parish governments, then, became vehicles for developing policies for the small communities. They also provided an additional governmental organization model for some of the American colonies.

Development of the county in America

By the time the colonies began to form in the new land the English model was already well developed. It should not be unexpected, then, that these basic institutional structures were applied to the colonies as a means of exercising control under the royally appointed colonial governors.

The colonial counties, however, did not remain carbon copies of the counties in England. As with most social institutions, they were modified to fit the conditions and circumstances in the new land. In retrospect, we can identify four basic off-shoots of the model created in England.

The Virginia County. The early settlers in Virginia, seeing little need for a system of counties, began organizing their institutions along the lines of the English parishes (towns). But they soon found them unsuitable. The principal reason was that the Virginians rather quickly developed a widely scattered pattern of settlement. The many navigable streams, the policy of granting land to individuals, and the absence of threatening Indians led to the development of the plantation economy. The system of parishes had little relevance for the small and widely dispersed settlements. And so, in 1634, the colony divided the settled territory into eight counties. As the settlements spread inland, new counties were created.

These counties became the focus of governmental authority flowing from the office of the colonial governor. From the counties, landowners elected delegates to the colonial legislature. The counties also became the judicial districts and the basis for the recruitment of men for military duty. The counties were also responsible for civil functions such as highways, bridges, and rivers (keeping them navigable), as well as overseeing the erection of water mills, licensing of ferries, and other matters.

The county "court" consisted of landowners commissioned-by the colonial governor. The county sheriff, who collected taxes and was responsible for the treasury, was also the executive officer for the county court. The sheriff and other officers were chosen by the colonial governor on the nomination of the county court. The officers thus had a dual allegiance--they had to be responsive to the concerns of the colonial governor but also to the landowners serving on the county court.

The New England county. A different pattern emerged in the New England colonies--again in response to conditions faced there. The rocky soil, the colder climate, Indians who were not especially willing to give up their

territory, and a policy of granting land to groups (often religious communities) instead of individuals, resulted in a different settlement pattern. Here the settlers formed compact settlements within the 20-40 square miles of land granted to the groups of settlers. The development of fishing and shipping industries undergirded this settlement pattern.

Although the Massachusetts colony established four counties in 1643, these counties were not able to compete with the already developing parish or town governments that also had a strong religious influence, as we may recall from our grade school history lessons.

The Massachusetts counties served as judicial districts and also had some responsibilities for roadways, licensing, and a few other matters of concern to the colonial governor. But they did not emerge as powerful governmental centers. The pattern of strong town rather than strong county government spread to the other New England colonies and so it is perhaps not surprising that the two states with no county government are in New England, or that the other states in the region have barely visible county institutions.

The New York model. The approach toward organizing county government in New York became the model that Michigan followed later. New York patterns were influenced by the two approaches already underway and so developed a compromise plan. One of the strong influences was the New England town government approach; the other resulted from the English "ridings" established by the Duke of York after the defeat of the Dutch in 1616. The ridings were judicial circuits consisting of several towns within an area. The circuits began to be viewed as forms of county governments.

Right from the beginning of the dual organization, however, there were disputes in New York over which of the units would become dominant. The compromise reached called for town supervisors within a county to function collectively as the county board. The New York Colonial Assembly adopted this approach in 1704. It was later transported to Michigan, Illinois, and some other states by the settlers who moved westward on the Erie Canal.

The Pennsylvania approach. Penn's colony also was influenced by the experiences to the north and south. But the counties had a running start over the less-well-established town governments.

The Pennsylvania pattern gradually evolved into a fairly strong county government system headed by a three-person commission elected from the county at large. Nevertheless, the villages and other settlements also managed to gain some legal standing in their own right. Today both the counties and local units (cities, boroughs, and townships) survive as distinct levels of government.

The westward spread. If we examine county government across the nation today, we can readily see how these patterns moved westward with settlements inland.

Illinois is one of the more striking examples. This state was first settled and organized by settlers who had come from the southern states. Quite naturally, they established a southern county style of local government. Later, when settlers from New York began to establish their homesteads in Illinois, they wondered why there were no township or town governments. The absence of township government became an issue at a constitutional convention. Delegates settled the dispute by reaching a compromise--the voters in each county could determine for themselves whether they would have a township substructure within each of the counties. Today, about two-thirds of the Illinois counties have township government, one-third do not.

In contrast, we note that Ohio, Indiana, Iowa, and Kansas have three-person county commissions reflecting the westward movement of settlers from Pennsylvania and the influence of the Pennsylvania plan for county government. Although each of these states has some form of township government, townships exercise few powers. The relative division of powers in these states today reflects the early experiences in Pennsylvania.

As we go further west, the specific eastern influences are less evident. In those states with large unsettled areas, we generally find a form of strong county government with little or no township government. These states use a commissioner form of government--usually three to five members elected from the county at large.

The development of county government in Michigan was strongly influenced, as we shall see, by the model developed in New York.

Development of county government in Michigan

We trace the beginnings of the Michigan local government system to the adoption of the Northwest Ordinance in 1787, the Continental Congress' charter for the settling and governing of the lands west of Pennsylvania to the Mississippi River and north of the Ohio River. The Northwest Ordinance provided for the temporary rule of these lands by the national government until states were organized in the territory.

Thomas Jefferson, then a member of the Continental Congress, was enamored with the experiment of direct democracy being practiced in the New England towns. He envisioned a time when the subdivided units of the Northwest Territory would also develop into "pure and elementary republics," much like those in Massachusetts and the rest of New England. He was, therefore, influential in having the Ordinance include provisions that would set the stage for such a town type of government to develop; lands were to be surveyed into townships with one of the sections in each township to be set aside to support a local school system.

In 1796, the acting territorial governor officially set the boundaries for Wayne County--it included virtually all of the state of Michigan and parts of Ohio, Indiana, Illinois, and Wisconsin. Wayne County, with the Detroit

settlement as its center, would be the regional headquarters for governing this part of the territory.

Gradually, as the lands became settled, state borders were set and new counties were established. The final boundaries for Wayne County were established in 1826. In 1830 there were 12 counties in Michigan, Michilimackinac then having the largest land area. By 1852, the boundaries of most of the counties in the southern part of the lower peninsula had been set and in 1891 the last of Michigan's present 83 counties was organized.

The Constitution of 1835. Michigan's first state constitution provided for the continuation of many of the county officers already established under the territorial government. The 1835 Constitution required the election of a county clerk, treasurer, sheriff, register of deeds, surveyor, and at least one coroner. The governor appointed the prosecuting attorneys. This constitution was also influential in setting the pattern for the system of courts.

The 1835 Constitution, however, did not address the matter of how the county board was to be constituted; so it is little wonder that we in Michigan also had a battle over this question. The legislative council of the Northwest Territory had provided for the supervisors of organized townships to constitute the county board. But in 1838 the state legislature changed the system to provide for the election of commissioners from the county at large. This lasted only four years, when the legislature re-established the supervisor system. Township supervisors sat as members of county boards until 1966, right through two more state constitutions.

The 1850 Constitution. By 1850 it was time for a new constitutional convention. The 1850 Constitution reaffirmed most of the patterns that had developed to that point, added the prosecutor as an elected official, and deleted the coroner and surveyor from the list.

The statutes that the legislature enacted following the adoption of this constitution became fundamental in terms of the powers and duties of the elected officers. To this day many of those statutes remain in effect.

The 1908 Constitution. The early 1900s was a period of reaction and reform--reaction to the patronage abuses that flowered under Jacksonian philosophies, and reform in terms of values of "good government" and the idea that government should be managed and run in a "businesslike" way.

The 1908 convention gave home rule or charter government powers to cities and villages but not to counties or townships, although delegates thought about it. In their "address to the people," the delegates stated that they were giving the county boards of supervisors the authority to set their own salaries as "an extension of the right of home rule."

This convention was also notable for its assignment of health and welfare activities to counties. The 1908 Constitution authorized counties to establish "charitable hospitals, sanatoria, and other institutions," as well as an

"infirmary for the care and support of their indigent poor and unfortunate." Otherwise the new constitution left the counties pretty much unaffected; that is, counties retained the same powers and officers accorded them by the 1850 Constitution.

The present era of Michigan county government

The Michigan Senate considered home rule for counties in 1929 and for Wayne County in the 1930s and 1940s as well. But it was not until the Constitutional Convention of 1963 that Michigan counties finally gained this privilege by constitutional edict. But the constitution only directed the legislature to provide the enabling legislation. In 1966 the legislature enacted a county home rule law. The statute so sharply restricted the changes a charter county could make that it really provided little, if any, home rule. Only one county, Delta County in the upper peninsula, got to the stage of electing a charter commission and voting on a charter. The voters rejected the proposed charter. Wayne County voters defeated proposals to elect a charter commission in 1968 and 1972.

In early 1980, the legislature substantially amended the Charter County Act in order to satisfy objections to the 1966 act as it related to Wayne County. Under the revised act, the voters elected a Wayne County Charter Commission.

Optional forms of county government. In 1973, the legislature, following the pattern of some other states, enacted a law permitting two optional forms of county government—an elected county executive and an appointed county manager. This law permits some important differences from the basic form but still constricts the organization of county government in some significant ways. Two counties, Oakland and Bay, have chosen to organize under the elected-executive form. No other counties have reorganized under this statute.

Earlier the state legislature had provided some alternatives for bringing about some administrative coordination to county government. The three basic approaches were a statutory finance committee of the board of supervisors, a board of auditors, and a county controller. The legal authority for each of these offices differed, but in general they had responsibility for county buildings and grounds, proposing a county budget, overseeing county finances, and other duties that the county boards assigned to them.

Liberal construction clause. The 1963 Constitution contains one other potentially important statement regarding counties and local governments in general. This statement directs the courts to construe the constitution and law liberally and in favor of the local units.[3] Just how important it will become remains to be seen, but its effect on the long-applicable Dillon's Rule may be very significant indeed.

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[3] Michigan Constitution, Article 7, Section 34.

Dillon's Rule is a rule of strict construction of constitutional and statutory law for local units of government. It states that local units of government possess only those powers that--

(1) have been granted to them specifically,

(2) are necessarily or can be fairly implied in the expressed powers given, and

(3) are indispensable to the declared objects and purposes of the corporation.[4]

Over the decades this rule has served to constrict the local discretionary powers of local governments, especially counties and townships. Since the liberal construction provision in the Constitution indicates to the courts only an approach or attitude toward the interpretation of laws as they relate to local units, we might expect the effects to be rather long term in developing.

For the present, then, the close--if not strict--construction, the continuing common practice of writing detailed state laws, and the readiness of competing interests to seek judicial remedies indicate that the state will keep a rather close rein on its profusion of local governments.

Reapportionment. Though reapportionment of county legislative bodies was not specifically a product of the 1963 Constitution, the counties felt the impact of the one-person, one-vote decisions of the federal courts in the 1960s. The cases, of course, caused one of the major shifts in county government--the removal of township supervisors and *ex officio* representatives of cities from the county board of supervisors. In its place the legislature established a commissioner form with county board members being elected directly from single-member districts. County commissioners, thus, no longer hold the office by virtue of their being elected to some other office in a township or a city. This change reduced dramatically the size of county boards of commissioners and also removed the commissioners from representing city and township governments. Commissioners thus became politically responsible to voters within a specified district. The change also led to some redefinition of the place and role of county government.

[4] See John F. Dillon, Commentaries on the Law of Municipal Corporations , 5th Edition, Brown and Company, Boston, 1911.

II. STATE AND COUNTY RELATIONSHIPS

We turn now more directly to the question of the extent to which counties remain "arms of state government" and, conversely, how far they have moved in becoming governments that serve the unique needs and desires of their residents.

We begin with the premise that there are few clear-cut principles upon which our citizens agree to distinguish state functions from county functions. As we saw earlier, many of the local subdivisions were established to extend the reach of the central government and to make centers of government reasonably accessible to those who had business to conduct with the government. During most of our state's history counties served this purpose. Moreover, the township system added a lower level to the "chain of command" for state officials. Many local officials are responsible for administering functions that serve state purposes, although some of these functions, such as administration of property taxes and elections, also serve local purposes as well. In short, the state was and is dependent upon the local systems of government to carry out state purposes.

With modern means of communication and transportation, would a state beginning today make itself as dependent on a system of local governments to carry out its purposes? Probably not. But given a 150-year tradition, the state is not free to allocate governmental functions in terms of what contemporary technology would enable it to do. It must deal with the political realities that exist at the county and local levels. We thus conclude that the allocation of functions between the state and the local units are made not so much on the basis of principles as they are bargained in the political arena.

Influences for change in relationships

Changing federal-state relations. Perhaps one of the more important influences for change in the allocation of functions between the state and counties is the expanding role of the federal government. Many of our public issues have become nationalized, in the sense that the federal government has articulated a role for itself in the issues. Much of this developed during the period since Lyndon Johnson became president.

Examples of programs in which the federal government has developed a participatory role are numerous--health, welfare, mental health, education, crime, corrections, air and water pollution control, and many others. Many of these functions were once handled almost exclusively by local governments with a minimum of state oversight and virtually no involvement from the federal government.

But federal government involvement is not the only change. Federal involvement has had the effect of raising the state concern with these functions as well. In part, we suspect, this results from a subtle change in the state role. While the federal government has played a strong hand in defining the

programs and stating the requirements, the states have taken on a stronger coordinating role, especially as the federal government began distributing funds on a state "passthrough" basis. Moreover, the switch from project grants to block grants contributed to the development of a greater supervisory and coordinating role on the part of the state.

Technological advances. While the growing role of the federal government has been influential, it is not the only force for change. The high mobility of our citizens and our society's complex webbing of interdependent relationships have made the state more of a community than it once was. The isolation caused by slow communication and difficult travel no longer exists. Present day mobility and societal relationships have accented the need to improve the equality of access to critical governmental services and to have a uniform minimum level of service across the state.

Varied patterns of state-county relations

The greater sense of a "state community" has brought about a varied set of approaches in how state government relates to counties and to other units of local government. The fact that the state has not taken a single approach for all functions should not surprise us since, as we have noted, the relationships are negotiated in the political arena.

State takeover of functions. In at least one instance, federal involvement and technological advances have led to an almost complete state takeover of a major program, the welfare assistance program. Once a county-state program, welfare administration has become a state-federal program in all important respects.

There are probably several explanations for this shift. For one thing, county officials did not vigorously oppose the change. In addition, welfare is a high-cost program--and the state must be accountable to the federal government for the expenditure of the funds. State officials are likely to conclude that they have greater control of the welfare system through their own bureaucracy than they would through a system of county administration.

Joint state-county programming. In some program areas we find a high degree of state and local participation--sometimes to the extent that the service has become a joint state-county or county-state program. Perhaps the best examples in Michigan are mental health and public health functions. In recent years we have had legislation calling for more direct state control over the definition of minimum local programs and state participation in direct funding of approved local programs. And while the state has indicated it wants to have a more direct hand in the exercise of these functions, it has continued them as county-administered programs. (We note that in neither of these programs has the state been able to finance its intended commitments-50/50 in public health; and in mental health, 90% state and 10% county.)

Parallel state programming. A third approach is direct state provision of the service--not at the expense of eliminating the county from the function, but

by creating a parallel agency. The department of state police is an example, one in which state government provides a service that supplements county-provided services. A second example is in the area of recreation facilities.

Earmarked financial assistance to counties. Another approach is direct financial assistance for a specific function that the counties provide. The example we choose here also involves the police function --state funding of county sheriff road patrol. We might also consider state funds for marine and snowmobile safety as examples of the direct financial assistance approach.

Local administration of state rules. We see another approach in the area of construction code enforcement. A few years ago the legislature determined that it was in the state's interest to have a uniform construction code. Undoubtedly the state could have taken over the entire function. What it chose to do instead was to require each local unit that decided to enforce a construction code to adopt and enforce the uniform state code.

Cities and townships were given an option--they had the right of "first refusal" with respect to the code. County governments, on the other hand, were instructed to take up the function in areas where the municipal units declined to exercise the function.

In this approach we see the state reaffirming the role of the 'county as an arm of state government. The state, however, reserves for itself the right to take over code administration in counties that perform inadequately.

Tax collector for local units. In an interesting turn of events from the time the local units were important tax collectors for state government, the state is now an important tax collector for the local units. We often tend to view this role in the reverse--that the state is providing the local units with financial assistance. Indeed it is. But we also note that a growing portion of the state's general aid to local units has come in exchange for revenues lost through changes in state tax programs. Thus, even though in a strict sense these taxes are state taxes, it is not erroneous to view the state as being an important tax collector for local units.

This role has evolved in part because the state can be a more efficient tax collector, at least of some taxes, than can a great number of local units. But the state's levy of certain taxes also lessens the extent to which local units become competitors with each other with respect to tax resources and tax rates. In addition, the state imposition of taxes tends to smooth out the peaks and valleys that local units would experience in their own collections. Of course, it also means that the local units must suffer through the roller coaster course of state revenues.

Supervision of problem areas. Our review of state-county relations would not be complete if we did not also consider the fact that the state exercises a strong hand in some problem areas. Elimination of sources of pollution is one instance. The state, for example, has ordered local units to install sanitary

sewers to correct a problem when citizens and officials in the local unit have not dealt as effectively with the difficulty as the state wished.

Further, as many of us know, the state has dealt firmly in the area of property assessment for purposes of the property tax system. And the state supreme court supervises very closely the lower courts and the relations the courts have with the legislative bodies of the local governments.

These three examples represent only a few of the problem areas that have come under state supervision.

Regulations and prescriptions. The final approach to state and local relations concerns regulations and requirements or prescriptions that the state imposes on the local units. Examples of this approach are the regulations on open meetings, uniform budgeting and accounting, and freedom of information. Another application of this approach is in the area of qualifications for police officers; police officers must meet state training requirements if they are to have authority to enforce state laws.

And of course we can point to the large number of laws that transfer authority to perform a specified function and indicate the manner in which the unit will exercise the authority. In fact, the county charter act is one of these--the law not only enables the county to adopt a locally drafted charter but also specifies in some detail how the chart commission will carry out its task.

County-federal relations.

The involvement of the federal government in matters once considered local affairs has changed more than just the state-federal relationships. It has also had a direct impact on the relationships of counties (and other local units) to the federal government.

One aspect of this county-federal relationship is that counties have direct communication with the agencies of the federal government. Often these matters concern project definition and funding of programs that the county wishes to undertake. And certainly the counties have not been above lobbying the federal government for programs they desire or against those they dislike. Recent examples are the involvement of counties acting through their state and national associations for the establishment of a program for repair of bridges and the fight in 1980 for the renewal of general revenue sharing.

But counties also have direct relationships with the agencies of the federal government. At times this may concern the resolution of complaints that a federal agency may have with the operations of a county. These communications may involve such matters as compliance with revenue sharing audit requirements; bidding procedures on projects involving federal funds; affirmative action and equal employment practices; or the quality of the care that county agencies, such as county jails, may be providing.

The future of state-county relationships

It would not be prudent to speculate at length on the nature of future state-county relationships. Not only might such speculation lead to tentative conclusions that could be wrong, but it could lead us to overlook something we have been stressing in this paper--that these relationships for the most part are not the product of dogma, they are the product of pragmatic political responses to problems and conditions of the period. As conditions change so do the definitions of what the problems are. Nevertheless we may discuss briefly some considerations that may affect county-state relations.

Constitutional limit on state mandates. In November 1978, the voters amended the constitution and required the state to pay the costs of any new functions the state requires of local units. Many local officials believe that the legislature "watered down" this constitutional requirement in the related enabling law and are certain to test in the courts any mandate they believe violates the constitutional provision.

This provision might well affect future state strategies for handling problems state officials consider important. Had the limitation been in effect at the time the legislature passed the uniform construction code enforcement act, for example, it seems likely that the legislature would not have required counties to enforce the act in cities and townships that refused to do so. That is, if the state had been required to pay counties for the enforcement of the act, as would now be the case, the legislature would probably have found a different solution to the problem. Conceivably the solution would have been the state assumption of this function.

This constitutional provision will almost certainly affect state-local relations for a long time to come.

Tax policies and spending limits. The resistance to the growing reliance of local governments on property tax revenues seems likely to bring about some change in state-county (and other local units) relationships. In recent property tax relief programs, the state absorbed some or all of the costs, thus contributing to the expansion of the state as a principal tax collector for local units.

Future property tax relief actions may not follow this course-local units may have to bear the cost. If the state does not reimburse local units for the loss of local property tax revenues resulting from tax relief programs, they may turn to other sources of tax revenues or even voter-approved property tax increases. This could lead to wide variations in tax rates among local units and possibly severe competition among local units over taxing resources and tax rates. It might also mean that taxing units will have to suffer alone through low portions of their revenue cycles.

The 1978 constitutional amendment (mentioned above) also placed a limit on the authority of the legislature to tax and spend. The limit is based on a percentage of overall personal income in the state.

It is unlikely that the state, with this kind of limitation, could have expanded as greatly as it did during the period when federal domestic expenditures grew so rapidly. (During that period, federal expenditures encouraged the expansion of state government as well as local governments.)

Changes in federal government policies. Only time will tell how extensively and in which direction federal programs will change during the present administration and how the changes will affect state-county relations. As a candidate, President Reagan indicated that he wanted to return a number of the federal programs to the states. Ronald Reagan, of course, was not the first to advocate such a change. (In the 1950s, President Eisenhower convened the Kestenbaum Commission to identify the programs then in effect that should be returned to the states. The commission was able to identify very few. During the years that followed, federal programs increased dramatically.)

Again, it is risky to make decisions on the basis of what one assumes will happen in the national political arena. But it is important to understand that state-county relations can be affected dramatically by changes in state-federal relations.

III. MUNICIPAL RELATIONSHIPS

Earlier in this paper we indicated that townships have been a part of the state's "chain of command" in carrying out state functions. Cities and villages, for the most part, serve a different purpose, even though they also, of course, exercise some of these state functions. The cities and villages exist primarily to serve the particular needs of their residents, on the assumption that people living in urban areas in close proximity to each other have special governmental needs and wants.

We know of no clear point of change in role, but in our view townships have gradually come to serve the same purpose as cities and villages. Although significant differences remain between cities and townships, the authority of townships to provide services and to deal with problems of urban or suburban populations is not unlike the authority cities possess. And more and more legislation seems to deal uniformly with cities and townships as though they have the same purposes.

This trend has implications for the relationships of county governments to the political subdivisions within counties.

First of all, the chain of command for more and more functions stops with the county-it is becoming only a two-link chain in regard to many functions. That is not the case in property tax administration or elections because in both functions the county has specific duties as do the local units.

But importantly, these duties are usually the same for both cities and townships.

Second, the trend means that counties may be excluded from many governmental functions. The county has no geographical territory over which it has exclusive control. And under many present state policies, the cities and now townships possess the primary authority to carry out a service or exercise a function. They have the right of first refusal. In planning and zoning for example, county zoning applies only if the townships fail to adopt their own ordinance. And we mentioned earlier the similar situation regarding construction code enforcement.

Counties, of course, exercise some functions, such as public and mental health, exclusive of local units. And counties administer the road systems in the unincorporated areas as well as portions of those in cities. These allocations of responsibility and authority are subject to change over time. But until changes are made, counties are not free to develop their own comprehensive programs in many functional areas without frequent consultation with the cities and townships. Counties thus may become more specialized than they are now, carrying out those responsibilities the state assigns to them.

Third, the legal status of cities and townships is such that they can bring about a standoff and frustrate county designs in functional areas where the cities and townships have prime authority.

This seems to be especially true under the county charter act. The charter county will face difficulties in dealing with services and regulations that already exist in some of the cities and townships. Moreover, county officials undoubtedly will find frustrating the statutory provisions that require a charter county to provide certain services countywide before it can pay for them with general fund revenues. One or two local units could block the designs of county officials to develop a meaningful countywide service.

Bargaining with the cities and townships rather than issuing edicts will be the order of the day.

IV. THE NATURE OF A COUNTY CHARTER

The proponents of charter county government argue that state government should grant "home rule" powers to county government for two basic reasons:

(1) to free county government from excessive restrictions and outmoded legal concepts; and

(2) to give counties greater flexibility in organization, finance, and functions.

The general idea, then, is that a charter will permit the local citizens to determine the basic rules regarding what the county government will do and how it is to be organized. Citizens would establish these basic rules in the county charter much as the citizens of the state do through the state constitution.

At the heart of this contention is the belief that county governments should not be tied so tightly by the application of Dillon's Rule which we discussed earlier. In fact, some proponents maintain that county home rule should mean that counties should be permitted to do whatever is not prohibited by constitution and law rather than taking the position that counties may do only those things that the constitution and law allow. These advocates of a broadened home rule also maintain that those statutes that provide the legal framework for general law counties should not apply to a charter county unless the general statute expressly applies the provision.

The Michigan dilemma

The application of this approach to the Michigan situation poses a difficult dilemma. The dilemma concerns two aspects:' powers and duties of the charter county, and the organizational flexibility.

Allocation of powers and duties. Michigan would probably have granted counties the right to operate under locally drafted charters earlier, had it not been for the problem of how a charter county would relate to the political subdivisions within the county. The difficulty was to decide how two units could exercise home rule powers over the same territory and same citizens. This problem was more pronounced earlier in this century when the concepts of home rule were more doctrinaire than they are now--when home rule meant local rule, nearly free of interference from the state legislature.

In Michigan at least, a good deal of this rigid perception of home rule has eroded or has become less dogmatic. State laws still occasionally make some allowances for home rule cities to do things differently than the way a general statute prescribes. At the same time, though, the legislature has been passing laws that infringe on matters most people would consider the concern of a local charter or even an ordinance. The Open Meetings Act and the Uniform Budgeting and Accounting Act, for example, must contravene provisions of municipal charters around the state or at least impose more detailed instructions than do the charters themselves.

What we find, then, is that a charter or home rule government in a local unit does not give officials the liberty to do whatever the charter may allow or not prohibit. Charters must conform to the provisions of the respective enabling acts and other existing law.

This narrowed interpretation and practice of home rule in Michigan has made it easier to reconcile the issues inherent in the first dilemma-how two levels of government can exercise home rule powers over the same population and geography. The dilemma is resolved by limited home rule.

Not all states have had to resolve the problem in precisely this way. Many of the states that permit charter county government do not have a subsystem of townships. In such states, the counties have exclusive control over a territory--the unincorporated areas of the county. Charter counties in these states generally do not exercise their functions or provide their services within the boundaries of the cities except by mutual consent.

Organizational flexibility. The second aspect of the dilemma hinges on how much flexibility to give the county in matters of organization.

A quick review of Michigan's Home Rule City Act shows what the home rule philosophy intended home rule to mean in terms of governmental organization. This law only requires a city government to have a mayor and an elected council. Beyond that, local charter commissioners are free to organize the government in any way local voters will approve. This is not the case, of course, for charter county government.

The difficulty is that present county government rests upon a long tradition that not only requires certain county officials but also requires them to be elected to office. These officials, like other interest groups, can bring about a great deal of pressure on the legislative process. In Michigan, as well as in other states, these elected officials were able to influence the legislature so that the enabling legislation restricted the freedom of a charter commission to propose (1) the form of organization, (2) the number of officials, (3) the method of selection, and (4) their relation to other agencies of the county government and indeed to the state itself. (This is not intended to be critical of these groups; any interest group would probably have acted in a similar way under comparable circumstances. But it again underscores the idea that public policies are the product of negotiation and compromise.)

Implications for the charter commission. What are the implications of this dilemma for the Wayne County Charter Commission? There are two obvious approaches to the work of the commission. One approach would accept the limited view of home rule and the second would assert a broadened view of home rule.

The limited home rule view—The concept of limited home rule would essentially acknowledge as reality the Michigan dilemma regarding home rule and the realization that home rule in the "classical" sense (circa 1900) is probably no longer attainable.

This view also acknowledges that the county charter enabling act has already written, or precluded the charter commission from rewriting, major portions of any proposed Wayne County charter. In other words, the commission is not starting with a clean slate; the enabling act has already filled in a good many of the boxes that would appear on the county organizational chart.

This is not an unreasonable position; the legislature has, in fact, done a great deal of the commission's work. And like it or not, the 1963 Constitution

gave the state legislature the authority to place certain constraints on the charter commission and on the charter itself; Article 7, Section 2 permits the formation of charter counties in "a manner and with powers and limitations to be provided by general law." The only reasonable recourse is to live with these limits for now and seek over the coming years to have those that are most bothersome changed.

The broadened view of home rule—Those advocating a broadened view of home rule also acknowledge that county home rule in the classical sense is not attainable. But, these advocates argue, it may be possible to reduce the constraints seemingly imposed by the legislature and to assert that statutes intended for general law (non-charter) counties do not apply to charter counties unless a general law expressly so specifies.

People who hold this view might argue that the Wayne County Charter Commission is obligated to make this assertion on its own behalf and on behalf of those counties that will later reorganize under a county charter. They might argue further that there is not a great deal to lose--at most it would probably mean some modest revision if the governor and attorney general reject the position, or perhaps some invalid language in the charter should the courts overturn the position after the charter is adopted.

If this approach did succeed, advocates of the broadened view believe the gains would be significant; more issues could be resolved locally instead of by a state legislature that may not be especially sensitive to the particular needs of a single county. And, they might add, this would be the beginning of a real breakthrough for charter counties as well as for cities and eventually townships.

A closing observation. Whatever course the Wayne County Charter Commission decides to pursue will demand a high degree of political acumen and ingenuity. The limited view of home rule, it seems, provides the most reasonable route to what is a respectable and meaningful objective, although the objective is somewhat more modest than that envisioned by the broadened-view advocates. To be sure, a broadened view of home rule might promise a bigger prize, but this approach would almost certainly lead the charter county into all manner of legal battles, not only on matters related directly to county government concerns but also on more general concerns such as workers' compensation, collective bargaining, environmental management, and many others.

Our hope is that this paper will contribute to the charter commissioners' understanding of the background against which the choices regarding Wayne County will be made, and that the decisions reached will prove to be beneficial for the county and citizens alike.