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HOME RULE IN WAYNE COUNTY: I

County Structure in Michigan

This is the first in series of Council Comments reviewing the condition of Wayne County, Michigan, with special emphasis on changes in organizational structure under a home rule charter. The experiences of Wayne County, the oldest, most populous, and most complex county in Michigan, occasioned state sanction of alternate forms of county organization. Events in Wayne County will, therefore, be used to introduce the existing general law, optional unified, and home rule charter forms of organization, and to trace the effects of home rule charter adoption on the organization and operations of Wayne County. This issue will describe briefly the development of various county structures available in Michigan; subsequent issues in this series will analyze the effects of the home rule charter on reorganization and the separation of powers, the implementation of a system of checks balances, and the current financial condition and continuing issues in Wayne County. All of these papers summarize information contained in a lengthy report entitled **A Review of the Effects of Home Rule on Wayne County**, available upon request. This analysis has been prepared not only to examine the effects of adoption of Michigan's only county charter, but also to provide background on county history and organization and to assist residents of other counties who may be considering restructuring their county government to increase efficiency and accountability.

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The Role of Counties. Counties are anomalies in our representative democracy. They exist as a result of state action, rather than the action of citizens; the structure has roots in medieval England rather than in the U. S. Constitution. Historically, counties have not been considered representative units of government, but rather administrative arms of the state, created to perform decentralized functions such as maintaining land title records, supervising elections, constructing public improvements, enforcing state law, and administering justice.

As counties have become more complex, having been given additional responsibilities in successive Michigan constitutions and statutes, and as improvements in technology have challenged the original underpinnings of county organization, the structure of counties has received increased attention. County organizational structure is critically important because it is the framework within which public policy is determined and implemented at the county level.

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County government has been referred to as the invisible government, but in fiscal 1986 Wayne County expenditures exceeded half a billion dollars, an amount that deserves more than passing notice.

The General Law Form. The plural executive-commission form of general law counties has been legitimized in every Michigan Constitution. The 1963 Constitution specifies that county sheriffs, treasurers, clerks, registers of deeds (the offices of clerk and register of deeds may be combined), and prosecuting attorneys are to be elected. The 1963 Constitution continued to provide for a board of supervisors consisting of one member from each organized township and such representation from cities as provided by law. This constitutional provision had resulted in the County of Wayne having 147 members on its board, but one man-one vote decisions by the U. S. Supreme Court led to the 1966 adoption of Act 261, which required the direct election of county supervisors (now called county commissioners) from single-member districts.

The general law form, reflecting the ideals of Jacksonian democracy, imposed a structure in which independently elected executive branch officials direct departments engaged in legally-mandated functions and a county board makes county policy and directs the activities of county agencies not headed by elected officials. This structure was intended to assure accessibility and prevent the concentration of power, but it did not establish accountability or an effective system of checks and balances.

Structure can increase or decrease effectiveness. In urban Wayne County the general law structure was recognized as contributing to increasingly severe operational and financial problems.

Home Rule. Cities and villages, but not counties, had received home rule powers under the 1908 Constitution. Home rule, subject to state law, allows a local unit to organize its form of governance to meet changing conditions. Although efforts to place county home rule amendments on the ballot failed in the 1920s, 1930s, and 1940s, the 1963 Constitution did sanction county home rule in Article 7, Section 2, which empowers the adoption of enabling legislation: "The law may permit the organization of county government in form different from that set forth in this constitution."

In 1966, the Michigan Charter Counties Act, Act 293, was passed. The original act provided for the election of charter commissioners and the process of charter adoption, and required that a county charter include provisions for an elected county executive, legislative county commission, and the partisan election of a sheriff, prosecuting attorney, county clerk, treasurer, register of deeds, and for the election or appointment of a board of county road commissioners and of a drain commissioner if the county had one.

Wayne County voters defeated proposals to elect a charter commission in 1968 and 1972. Only Delta County in the upper peninsula elected a charter commission under the original enabling legislation, but Delta County voters rejected the commission's proposed charter.

The Optional Unified Form. Early in 1971, the Citizens Research Council completed an analysis requested by the Wayne County Board of Commissioners. **A New Approach to the Organization of Wayne County Government** introduced the proposed optional unified form of county government, which was adopted as Public Act 139 of 1973. In effect, the

state law, with the approval of the voters, would be the county charter. This legislation allows county voters to choose either an appointed, professional county manager or an elected chief executive officer; either may be proposed by the county commission or by petition. The county commission retains significant authority in this form; in addition to traditional legislative functions of establishing policy, adopting rules and ordinances, adopting budgets, establishing salary levels for elected officials and appointees, adopting a classification plan, and investigating official conduct, the commission continues to appoint members of boards and commissions, adopt and enforce rules establishing the authority, duties, and responsibilities of county departments, and create or consolidate departments and transfer functions.

Under Alternate A, the appointed manager serves at the pleasure of the board of county commissioners and has no veto. Under Alternate B, the elected county executive may veto any ordinance or resolution adopted by the board, subject to override. The manager or executive is responsible for supervising, directing, and controlling functions of all departments not headed by elected officials; coordinating activities; enforcing orders, rules, and ordinances; preparing and submitting a recommended budget; administering the expenditure of funds; and with commission approval appointing and removing department heads.

Act 139 provides that the sheriff, clerk/register or clerk and register of deeds, treasurer, prosecuting attorney, drain commissioner, and boards of county road commissioners shall be elected or appointed in such manner and for such terms as provided by law. The optional unified form of county government does not include a charter-drafting process; there are no charter commissioners, no arguments over charter provisions, and no submission of a proposed charter to the governor. The state law is, however, subject to adoption or rejection by the voters.

Oakland and Bay Counties have reorganized under the optional unified form, both with the elected executive option.

Problems in Wayne County. In 1979, Wayne, still a general law county, was experiencing extraordinary difficulties. Auditors from the state had found the county's books to be unauditably. County employee costs were extravagant, with some employees earning more in base pay than their supervisors. There were too many semiautonomous departments and too much cronyism and nepotism. The budget omitted major portions of county operations, and was made more meaningless by court decisions granting to elected officials resources they felt were necessary to meet their constitutional responsibilities. Political divisions between Detroit and the suburbs, between blacks and whites, and internecine union conflicts, as well as tax base growth that lagged inflation, all contributed to the paralysis of Wayne County government. The Municipal Finance Commission had made issuance of tax anticipation notes conditional on submission of a plan to eliminate the county deficit, but county officials were unable to produce such a plan. On August 28, 1979, the Municipal Finance Commission denied the county the authority to issue \$22 million of tax notes; on October 19, 1979, Wayne County was unable to meet its payroll.

By 1980, Wayne County was the only major urban county in the nation which had the power to reorganize its structure but had failed to do so. Of the other 18 counties in the nation with populations of over one million, six had elected county executives, nine had county managers, and three were not permitted to reorganize. Nationally, charters had been adopted in over 25% of counties with populations over 250,000.

Amendment of the Charter County Act. Efforts by the state to facilitate the reorganization of troubled Wayne County included amendment of the Charter County Act to strengthen home rule provisions, address specific objections, and tailor provisions of the act to Wayne County. That was accomplished by making certain provisions of Public Act 7 of 1980 applicable to counties of over 1,500,000 population; only Wayne County meets this criterion. In counties of over 1,500,000, two proposed county charters must be submitted to the voters, one containing an appointed administrative officer and the other containing the elected chief executive officer, which is the only option available to counties other than Wayne. While county road commissions are protected in other counties, in the largest county both the road commission and the drain commissioner are now optional.

The amended Charter County Act provides for a strong executive to supervise, direct, and control the functions of all departments except those headed by elected officials; coordinate activities; enforce all orders, rules, and ordinances; prepare and submit the county budget and work plan; and appoint, supervise, and at pleasure remove heads of departments and all boards and commissions. The elected county executive may veto any ordinance or resolution adopted by the county commission. The act also requires a balanced budget, an annual audit by an independent certified public accountant, and in the event of a deficit, preparation and submission to the governor and legislature of a specific 5-year plan for short-term financial recovery and long-term financial stability.

The need for reorganization had been recognized for decades. Finally, on August 5, 1980, Wayne County voters approved the creation of a charter commission and on November 4 of that year elected 27 charter commissioners, who prepared the required two versions of a proposed Wayne County Charter. The version containing an elected county executive was approved by the voters on November 3, 1981.

The next issue in this series will examine the Wayne County Charter and the effects of charter adoption on the organizational structure of Wayne County.