



AN ANALYSIS
of the
PROPOSED CONSTITUTION

Number 9

January 9, 1963

LOCAL GOVERNMENT

The Local Government Article (VII) in the proposed constitution continues the basic pattern of local government provided for in the present constitution, but makes a number of significant changes in the status and powers of the various units of local government (counties, townships, cities and villages, and metropolitan authorities). Among the most significant changes are the following:

- A new section requiring legislative implementation provides for a charter form of county government on a local option basis as an alternate to the present constitutional-statutory form of county government. A charter county may legislate on matters relating to its concerns, may levy non-property taxes subject to constitutional and statutory limitations and prohibitions, and to the extent provided by law may reorganize the structure of county government.
- Home rule cities are authorized to levy non-property taxes subject to constitutional and statutory limitations and prohibitions.
- A new provision requires that the powers of cities, villages, townships and counties be liberally construed and counties and townships are to have powers "fairly implied."
- The legislature is authorized to establish additional forms of government in metropolitan areas with such powers, duties and jurisdiction as provided by law.
- A new provision on intergovernmental cooperation gives a broad grant of power to local units jointly to administer or transfer functions, share costs, lend credit and cooperate with the state.

In addition to these major changes a number of other changes in local government provisions are included in the proposed constitution.

*Publication made possible by grants from W. K. Kellogg Foundation,
The Kresge Foundation, McGregor Fund and Relm Foundation.*

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County Government

Under the present constitution counties do not have home rule powers—the constitution and statutes prescribe in detail the structure and organization of county government, the substantive power of counties to perform services, and the taxing power of county government. A major issue in the constitutional convention was whether and to what extent counties should be vested with home rule powers in these three major areas. As finally approved by the convention the sections of Article VII dealing with counties provide that counties may continue to operate under the standard constitutional-statutory (non-charter) form of county government or, when the necessary enabling legislation is enacted, may adopt a charter form of government.

Non-Charter Form of County Government

The present basic constitutional provisions on county government were continued with some modification in the proposed constitution. The sheriff, clerk, treasurer, register of deeds and prosecuting attorney will continue to be elected in each county but the term of office will be increased from two years to four years. The present board-of-supervisor system with one member from each organized township and representation of cities as provided by law was continued without change.

The powers and immunities of counties will continue to be provided by law and legislative, administrative, and other powers and duties may be conferred upon the boards of supervisors by law. However, a general provision was added that the constitutional and statutory powers of counties and townships are to be liberally construed in their favor and shall include those fairly implied and not prohibited by the constitution. The courts traditionally have construed narrowly the powers of counties and townships. In order to exercise a given power it has been necessary to point to specific constitutional or statutory authorization. This provision for liberal construction and implied powers is intended as a mandate to the courts to construe more broadly the powers of these local units.

Two major changes in the fiscal powers of non-charter counties are proposed. The present limitation of 1/10 of 1 mill that may be spent for capital outlay without a vote of the people is deleted and the county debt limit is increased from three per cent to ten per cent of its assessed valuation. Non-charter counties will continue to be subject to the 15-mill property tax limitation or to the new alternate 18-mill limitation (see *Analysis* on Taxation).

A new provision authorizes two or more contiguous counties to combine in ' to a single county with the approval of the voters in each county. The present provision authorizing cities of over 100,000 to organize into a separate county is deleted. A new section authorizes counties to intervene in proceedings involving the rates or services of privately owned public utilities. Airports were added to the list of public works projects which the legislature may authorize counties to undertake.

In addition to these changes, a number of minor changes or deletions were made in the present constitutional provisions on counties. On the whole there was relatively little major change in the basic structure, the substantive powers or the financial powers of non-charter counties.

Charter Form of County Government

As an alternate to the present constitutional form of county government, the proposed constitution provides a charter form of county government. The charter county provision is not self-executing and will require legislative implementation. The legislature by general law is to provide for the manner of framing and adopting a charter, the powers and limitations of charter counties, limitations on the rate of property taxation and on borrowing, and may permit the reorganization of county government in a form different from that set forth in the constitution.

Organization. The provision that the law *may* permit the organization of county government in a form different from that provided in the constitution was a compromise. Some convention delegates wanted to give counties the home rule power to determine their own structural organization (what officials they wanted and how they wanted to select them). Other delegates wanted all counties, charter and non-charter, to have the elected sheriff, clerk, treasurer, prosecuting attorney, register of deeds and a board of supervisors representing the townships and cities.

Under this provision the legislature can provide for no change in the organization of county government; it could provide one or more alternate forms of government allowing the charter county to select one of these; or, the legislature could follow the precedent established in the present city home rule act and give the counties a broad grant of home rule power to determine in its charter the form of organization it wants. This provision does not give counties structural home rule, but it does permit the legislature to do so.

Powers

As in the case of non-charter counties the powers and limitations of charter counties are to be provided by general law and are to be liberally construed and include those fairly implied. However, subject to law, a county charter may authorize the county to adopt resolutions and ordinances relating to its concerns. This provision is intended to broaden the powers of a charter county government to deal with its local problems.

Finance

The state enabling legislation for charter counties is to limit the rate of ad valorem property taxation for county purposes and to restrict their powers of borrowing money and contracting debts. Charter counties are specifically exempted from the general 15-mill limit provided for in Article IX, Section 6 of the proposed constitution. Charter counties are granted the power to levy taxes other than the property tax subject to limitations and prohibitions set forth in the constitution or law. Exempting charter counties from the

15mill limit and authorizing them to levy non-property taxes broadens significantly the taxing power of charter counties.

Procedure. The charter county provision authorizes any county with approval of a majority of electors voting on the question to frame, adopt, amend or repeal a county charter in a manner provided by law. The law shall provide for the election of a charter commission. The question of electing a charter commission may be placed on the ballot by a majority vote of the board of supervisors or by petition of five per cent of the electors.

Townships

The powers and immunities of organized townships and the legislative and administrative powers and duties of the township officers will continue to be provided by law. However, the powers of townships are broadened somewhat by the provision that constitutional and statutory provisions concerning townships are to be liberally construed in their favor and their powers shall include those fairly implied.

The structure of township government as prescribed in the constitution will be changed slightly. The supervisor, clerk, and treasurer remain constitutional elective officers and, in addition, the township trustee is given constitutional status by the provision that not to exceed four trustees are to be elected. The term of office may be increased by law from two years to not more than four years and, instead of being elected in April of odd numbered years, township officers will be elected in the November election. The present provision for commissioners of highways, constables and reclassification of justices of the peace are deleted.

Townships will continue to be subject to the constitutional property tax limitation, but charter townships are specifically exempted from the limitation. The present restriction on townships granting public utility franchises is continued. A new section provides for the dissolution of a township government whenever all of the township territory is included within a village.

Cities and Villages

The proposed constitution provides for a continuation of municipal home rule and extends the authority of cities and villages in the field of non-property taxation and in legislating with respect to municipal property and Government. General laws of the state are to provide for the incorporation of cities and villages and restrict their *property* taxing and borrowing powers. However, the taxing authority of cities and villages is broadened considerably by the provision that they can levy taxes other than the property tax subject only to limitations and prohibitions provided by the constitution and laws. Under the present constitution cities and villages have only the taxing authority granted them by the legislature.

The proposed constitution continues the grant of municipal home rule power by providing that the electors of a city or village have the authority to frame, adopt and amend a char-

ter under general laws. The present constitutional power to adopt resolutions and ordinances relating to municipal concerns subject to the constitution and laws is extended to municipal property and government. This provision is intended to give cities and villages greater power in these areas subject only to specific limitations imposed by law. It is further provided that the enumeration of powers in the constitution shall not limit or restrict the general grant of authority conferred upon cities and villages in the constitution.

The present provision on public works and public utilities were continued with some modification. Authorization was added for cities and villages to own and operate sewage disposal facilities and they may be authorized by law to increase the amount of heat, power or light sold outside the corporate limits. The present general prohibition against a city or village loaning its credit was changed to permit a city or village to loan its credit for public purposes as provided by law.

Metropolitan Government and Intergovernmental Cooperation

Two sections of the local government article of the proposed constitution deal with metropolitan government and intergovernmental cooperation. These two provisions expand significantly the power of the state and the local units to find solutions to the problems of providing governmental services in areas which have multiplicity of units of local government.

The metropolitan provision of the proposed constitution gives the legislature a broad grant of power to establish in metropolitan areas additional forms of government or authorities with such powers, duties and jurisdictions as the legislature shall provide, "notwithstanding any other provision of the constitution." This provision apparently does not contemplate the elimination of existing constitutional units of local government (counties, townships, cities and villages), but rather the creation of additional forms of government. However, since the legislature can establish the jurisdiction, powers and duties of any metropolitan unit notwithstanding any other provision of the constitution, it appears that the legislature would have considerable discretion in transferring powers and duties from existing units of Government to a metropolitan government. In order to discourage the formation of a number of overlapping single-purpose metropolitan authorities, the provision further requires that whenever possible metropolitan units shall be designed to perform multi-purpose functions.

The section on intergovernmental cooperation provides that the legislature shall by general law authorize two or more counties, townships, cities, villages or districts to:

1. contract with one another or with the state for the joint administration of their respective functions or powers;
2. share the costs and responsibilities of functions and services with one another or with the state;

3. transfer functions or responsibilities to one another with **the consent of each unit**;
4. cooperate with one another and with state government; and,
5. lend their credit to one another in connection with any authorized publicly-owned undertaking.

The section also authorizes state and local officers and employees to serve on any governmental body established for the joint administration of functions. This is a broad grant of power for intergovernmental cooperation and permits a wide variety of intergovernmental arrangements subject only to the limitations imposed by the requirement that units cannot do jointly that which they cannot do individually and such other limitations as may be provided by law.

This section is not limited to metropolitan areas of the state and with the necessary enabling legislation all units of government in the state will be able to utilize these provisions, including those rural areas of the state which individually lack the population or the fiscal capacity to provide necessary services.