A REVIEW OF THE EFFECTS OF HOME RULE ON WAYNE COUNTY GOVERNMENT

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A REVIEW OF THE EFFECTS OF HOME RULE ON WAYNE COUNTY GOVERNMENT

Introduction

Wayne County reorganization under Public Act 293 of 1966 as amended was aimed at improving the administration and operation of the county by modifying its organizational structure. The reduction in the scope of activities of the county commission and the vesting of administrative authority in a chief executive officer (CEO) were crucial components of reorganization under a system of checks and balances. In addition to reviewing the history of organizational and operational problems in Wayne County, this report describes the organization structure and separation of powers as required in the state enabling legislation, as defined in the Wayne County Charter, as implemented in the reorganization plans, and finally as interpreted by local legal opinions and the courts. It also identifies available alternative county structures, and attempts to offer some insights of value to those residents of other counties who may be considering the home rule option.

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Part I. Counties as Units of Government

A. A History of County Organization.

Counties as Administrative Branches of the State. The government of these United States was crafted carefully to insure a separation of powers among three equal branches. This governmental form fixed responsibility and authority and simultaneously prevented the concentration of potentially abusive power through a system of checks and balances. State constitutions similarly established executive, legislative, and judicial branches to fix responsibility and share power. Michigan has long allowed home rule cities to organize in comparable fashion, with interdependent branches dividing responsibility and sharing power.

But Michigan and other states generally followed the original thirteen colonies' adoption of the English form of local governance when prescribing the organization and authority of counties, which were considered to be administrative branches of the state rather than representative units of local government. Counties were the governmental unit traditionally responsible for maintaining land title records, supervising elections, constructing public improvements, enforcing state laws, and administering justice. This decentralized, plural executive-commission structure required the election of numerous semiautonomous officials and boards, each controlling a fiefdom of revenues and powers, and the election of a commission, representing the variety of the electorate and accessible to the voters, to manage general county functions. The advantages of this form were thought to include reducing the possibility of corruption or one-man rule through the election of numerous officials, the ability of the commission to compromise on potentially divisive issues, and the enhancement of democracy by the direct election of various governmental administrators. The county form was tailored for governance of rural areas: counties were designed so that residents could travel to and from the county seat in one day's buggy ride, to assure access to the seat of government.

In modern times, with vastly improved transportation and communication systems, tremendously more complex problems, and a significantly expanded role for county government, the old-fashioned county form may be inappropriate, even where rural conditions endure. A November 10, 1986 Wall Street Journal article, "Rural Counties Struggle to Maintain Services as Economies

Falter and Revenue Sharing Ends," emphasizes that the county form, while defended by county officials and "rural folk," must change to accommodate shrinking revenues. Alternatives to the number and kind of officials in counties, county consolidations, shared services and facilities are being considered and/or implemented in counties across the nation.

The Commission Form. An attraction of the original form of county government was the belief that citizen control of governmental functions could best be insured by direct election of the officials responsible for those functions, and that numerous elected officials would insure accessibility. Yet the primary problem with the commission structure was that of accountability: who is responsible when things go wrong? Prior to reorganization, Wayne County's twenty-seven member county commission exercised both legislative and executive functions. Numerous elected officials asserted their budgetary and operational independence. Inability within this organizational structure to coordinate policies and control activities led to uncollected revenues, unauthorized expenditures, uncontrollable deficits, payless paydays, and, eventually, to reform. Along the way, the county suffered from lawsuits by elected officials anxious to insure funding for the full exercise of their authority, excessively high wage and fringe levels for county employees as county commissioners competed for union support, and a spoils system for top county jobs.

It was apparent that the archaic organizational form was a major part of the problem. The realization that the commission form was inadequate to insure the efficient administration of increasingly urbanized counties in Michigan led to the inclusion of county home rule authority in the 1963 constitution (in contrast, California had permitted county home rule in 1911, Maryland in 1915) and to adoption of the Home Rule County Act, Public Act 293 of 1966. This enabling legislation allowed voters in each of Michigan's eighty-three counties to nominate a charter commission and to adopt or reject a charter developed by that charter commission within parameters set forth in the act. Wayne County, spurred by financial crises and under considerable state pressure, became the first Michigan county to begin operations as a home rule county on January 1, 1983, after amendment of the enabling legislation and a series of affirmative votes on charter issues dating back to August 1980.

B. County Organization in Michigan

Wayne County Predates the State of Michigan (but not the City of Detroit.) Cities are established as a result of the actions of their own inhabitants; counties are established without action by citizens, as administrative units of the state to provide decentralized services. Cities were organized prior to states or counties; Detroit, founded in 1701, became the center of the original Wayne County, which was established in 1796 by the acting territorial governor under the Northwest Ordinance. As part of the Northwest Territory, Wayne's administrative boundaries included all of Michigan and parts of Ohio, Indiana, Illinois, and Wisconsin. Townships, originally surveyed areas six miles to a side, were established as subdivisions of counties. The legislative council of the Northwest Territory determined that the supervisors of organized townships would comprise the county board. Within townships, cities and villages were developed by citizens to exercise more local authority.

County Structure Defined In Michigan Constitutions. Wayne County's present boundaries were established in 1826. Michigan's first state constitution, that of 1835, required the biennial election of a county clerk, treasurer, sheriff, register of deeds, surveyor, and at least one coroner. Judges were elected every four years; the governor, with the advice and consent of the senate, appointed the prosecuting attorney. In 1838, the year after Michigan became a state, the state

legislature required the election of county commissioners on an at-large basis, but four years later the legislators reverted to the previous system of designating township supervisors as the county board.

The 1850 Michigan Constitution affirmed boards of supervisors comprised of township supervisors, and specified the election of the county prosecutor, but did not include the coroner and the surveyor as elected positions. An amendment to the 1850 constitution authorized the legislature to establish county road commissions. Statutes passed under this constitution determined the enduring, fundamental powers and duties of county elected officials.

Cities and villages, but not counties or townships received home rule powers in the 1908 constitution. Home rule, subject to state law, allows a local unit to organize its form of government and representation and to change its local governance to meet changing conditions. The 1908 Michigan Constitution provided that the positions of county clerk and register of deeds could be combined, granted county boards of supervisors the right to set their own salaries, and assigned health and welfare responsibilities to counties.

Attempts to place a county home rule amendment on the ballot failed in the early 1920s; county home rule amendments were also defeated by the voters in 1934 and 1936. One-man grand jury revelations in 1942 and 1943 resulted in county home rule amendments being proposed solely for Wayne County in 1942 and 1944; these were defeated.

Article 7, Section 2 of the current, 1963 Michigan Constitution for the first time sanctions county charters:

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

Section 4 of the 1963 constitution requires the election to four-year terms of a sheriff, county clerk, county treasurer, register of deeds, and prosecuting attorney, and also provides that the board of supervisors may combine the offices of county clerk and register of deeds.

Although it would seem that the state has authorized organization of a county in form different from that set forth in the constitution, the attorney general has ruled that those elected county offices described in the constitution may not be abolished.

The original 1963 constitution again required that a county board of supervisors consist "of one member from each organized township and such representation from cities as provided by law." In highly developed Wayne County this requirement had resulted in a board of supervisors comprised of 147 members, all ex officio or appointed, dominated by the City of Detroit. Due to the unwieldy size of the board of supervisors, the much smaller ways and means committee exercised

considerable power and authority.

In 1966, as a result of U.S. Supreme Court one-man one-vote decisions, the legislature adopted Act 261, again requiring the direct election of county supervisors, this time from single-member districts, with the maximum number of supervisors dependent upon the population of the county. While counties of less than 5001 population could elect five to seven supervisors, the largest counties, those with over 600,000 residents, could choose to be represented by from 25 to 35 supervisors.

The Michigan Charter County Act. Also in 1966, the legislature adopted Act 293, amended by Public Act 7 of 1980, "to provide for the establishment of charter counties; to provide for the election of charter commissioners; to prescribe their powers and duties; to prohibit certain acts of a county board of commissioners after approval of the election of a charter commission; and to prescribe the mandatory and permissive provisions of a charter."

The amended act provides that in a county with a population of 1,500,000 or more (only Wayne County meets this criterion), voters must be offered a choice of an appointed or an elected chief administrative officer. "Except as to the method of selection of a chief administrative officer or an elected county executive; the veto power of the chief administrative officer or the elected county executive; and the removal of the chief administrative officer or the elected county executive, the 2 alternative charter proposals shall not differ." (Section lla (4))

The state act is vague in its description in Section 14(b) of the duties and requirements of the legislative branch of a charter county.

> "A county charter adopted under the provisions of this act shall provide for all of the following: ... The election of a legislative body to be known as the county board of commissioners, whose term of office shall be concurrent with that of state representatives, and for their authority, duties, responsibilities, and number which shall be not less than 5 nor more than 21 in counties of less than 600,000, and not less than 5 nor more than 27 in counties of 600,000, or more. The county board of commissioners shall provide by ordinance for their compensation and may increase or decrease their compensation. However, a change in compensation shall not be effective during the term of office for which the legislative body making the change was elected. The charter shall also provide for the partisan election of members of the legislative body from single member districts to be established by the county apportionment commission.... "

The act describes in much greater detail in Section lla (8) the minimum duties and responsibilities of the administrative or executive officer, who would be responsible for the implementation and coordination of county programs.

"(a) Supervise, direct, and control the functions of all departments of the county except those headed by elected officials.

(b) Coordinate the various activities of the county and unify the management of its affairs.

(c) Enforce all orders, rules, and ordinances of the county board of commissioners and laws of the state required to be enforced by his or her office.

(d) Prepare and submit to the county board of commissioners a recommended annual

county budget and work program, and administer the expenditure of funds in accordance with appropriations. An elected officer, county road commissioner, or a body which has the powers of a county road commission may appear before the board as to the officer's, commissioner's, or body's own budget. Not less than once each year the chief administrative officer or elected county executive shall submit to the county board of commissioners a proposed long-range capital improvement program and capital budget.

(e) Except elected officials, appoint, supervise, and at pleasure remove heads of departments and all boards and commissions.

(f) Submit recommendations to the board for the efficient conduct of county business.

(g) Report to the county board of commissioners on the affairs of the county and its needs, and advise the board not less than once each 3 months on the financial condition of the county."

The Michigan Charter County Act also requires the partisan election of a sheriff, a prosecuting attorney, a county clerk, a county treasurer, and a county register of deeds, and specifies that the board of commissioners must be able to combine the offices of the county clerk and the register of deeds. Responsibility for a county road system is vested in an appointed three-member county road commission. Section 14(l)(d)(ii) specifies that in counties of over 1,500,000 population local charters must provide that road commission members are to be appointed by the chief administrative officer with the advice and consent of the county commission and may be removed at the pleasure of the chief administrative officer, an important issue in Wayne County, where the road commission had functioned in a highly independent manner. That subsection was later amended and does not apply to any county in which the charter is amended to provide for an alternative method of carrying out the powers and duties which are otherwise provided by law for a board of county road commissioners. Section 15 recognizes the expanded role of county government in a list of permissible functions which may be included in a county charter: "any function or service not prohibited by law, which shall include, by way of enumeration and not limitation: Police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county."

Alternate Forms of County Organization. Early in 1971, the Citizens Research Council completed an analysis of county organization requested by the Wayne County Board of Commissioners. **A New Approach to the Organization of Wayne County Government** recommended an alternate county organizational structure, and introduced the concept of an optional unified county government act, which was adopted by the legislature as Public Act 139 of 1973. This authority was subsequently used by Oakland and Bay Counties, but not Wayne, to restructure under a county executive.

The optional unified form of county government available under Act 139 of 1973 allows county voters to choose either an appointed, professional manager or an elected chief executive officer. Either Alternate A, an appointed manager, or Alternate B, an elected executive, may be proposed by the county board of commissioners or by voter petition. Because this form involves the adoption of the state statute as the county charter, there is no election of charter commissioners, no

debates or arguments on charter contents, no submission of proposed charters to the governor. County voters must approve adoption of the optional unified form with either an appointed manager or elected executive, but in either case, the board of county commissioners retains significant authority. The state enabling act specifies the powers and duties of the commission in Section 6. These include establishing policy; adopting rules and ordinances; adopting operating and capital budgets; making appropriations, levying taxes, and incurring indebtedness as authorized by law; establishing salaries for elected officials and appointees and adopting a classification and pay plan for classified employees; adopting personnel rules; appointing members of boards, commissions and authorities; investigating the official conduct and auditing the accounts of a county office; appointing staff to assist the board in postaudit, investigative, and other functions; adopting and enforcing rules establishing and defining the authority and responsibilities of county departments; consolidating departments or transferring functions; and entering into agreements with other governmental or quasi-governmental entities.

Under Alternate A, the appointed manager serves at the pleasure of the board of commissioners, and has no veto power. The elected executive under Alternate B may veto any ordinance or resolution adopted by the board, but that veto may be overridden by a 2/3 vote of all commission members elected and serving. Section 8 of Act 139 details the powers and duties of the manager or executive. These include supervising, directing and controlling the functions of all departments except those headed by elected officials; coordinating activities; enforcing orders, rules and ordinances; preparing and submitting a recommended budget and administering the expenditure of funds; with commission approval, appointing and removing heads of departments other than elected officials; participating in county commission meetings without the right to vote; and submitting reports and recommendations to the county commission.

Act 139 provides that the county 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 term as provided by law. The board of commissioners determines county departmental organization for all functions not headed by elected officials, and may consolidate departments, transfer functions, create additional departments, and/or require that the county administrator serve as the director of a department. Departments which may be established subject to the county executive or manager include administrative services, finance, planning and development, medical examiners, corporation counsel, parks and recreation, personnel and employee relations, health and environmental protection, libraries, public works, and institutional and human services.

Alternates A and B offer two forms of county government that should be considered by those interested in county reorganization. These forms may be appropriate to units in which the board of commissioners functions responsibly, but greater coordination and overall control of activities are needed to increase efficiency. These forms can be implemented faster and with less disruption and contention than the home rule charter form.

Part II. Wayne County in Crisis

A. Drifting Toward Disaster

Wayne is unique among Michigan counties: by far the oldest, it is also the most populous (indeed, the fourth most populous in the nation) and most urbanized. It had for decades been recognized that reorganization was needed. Chapter V of The Government of the Detroit Metropolitan Area, written by the precursor of the Citizens Research Council of Michigan and published in 1934, is titled "The Need of a More Workable County Government with a Responsible Legislative Body and an Executive Head."

By the late 1970's, the problems in Wayne County were staggering. The county's records were unauditable; a July 25, 1979 letter from the deputy state treasurer to the board of auditors cited 22 significant variances from generally accepted accounting practices which prevented the state treasurer's office from auditing county financial operations. The state auditor general asked a prominent CPA firm for suggestions and assistance, but the CPA firm declined, citing an insufficient commitment by the county to make an audit engagement worthwhile. In addition, county employee costs were extravagant. There were too many elected officials, too much cronyism, too many semiautonomous departments. Wayne County was facing ever more critical problems, but no one was in charge. The role of the county commission was too broad, encompassing both legislative and executive functions, and at the same time too narrow, rendering it powerless to prevent excesses in operations headed by elected, or even appointed, officials. The commission structure was recognized as causing some, and inhibiting resolution of other, fiscal and operating problems.

That structure required that the elected board of auditors prepare the proposed county budget and submit that proposal to the county board of commissioners. The board of auditors did not audit and had no control over spending by county departments. The road commission budget was separately prepared and adopted by the road commission itself. The county budget omitted most of the expenditures of the drain commissioner, the road commission, and all grants. Court decisions rendered the budget meaningless: elected officials sued to obtain the resources they felt were necessary to meet their constitutional responsibilities, a practice that continues to this day.

Political divisions between Detroit and the suburbs and between blacks and whites, internecine union conflicts, as well as tax base growth that lagged inflation, all contributed to the paralysis of Wayne County administration.

Wayne was administered by 27 county commissioners elected from single-member districts, nine elected "executive branch" officials, and 82 elected judges in four local courts. Various appointive boards, commissions, and authorities exercised their independence. The road commission was perhaps the most independent: it had its own source of restricted funds from road user taxes as well as airport revenues, and had court authority for its position that it, rather than the county, was the ultimate public employer of road commission employees.

B. The Flash Point

In 1976 the Michigan Municipal Finance Commission issued an order to Wayne County directing the county to balance its budget. In spite of that order the county deficit continued to grow. In 1979 the Municipal Finance Commission made a Wayne County sale of tax anticipation notes conditional on county submission of a plan to eliminate the deficit; county officials were unable to

produce such a plan. On August 28, 1979 Wayne County's request to issue $22 million of tax notes was denied, and on October 19, 1979 Wayne County was unable to pay its employees, the first county since the great depression to default on a payroll.

It was clear that significant organizational changes had to be made to avoid a continuation of the problems that had plagued the county. Then-Governor William Milliken sought specific changes in Wayne County structure: an elected county executive with veto power over the board of county commissioners; coordination of the activities of other elected executive officials by the county executive officer; and an end to the independence of the road commission. Increased state aid was made contingent on these changes.

Local officials opposed reform. The powerful mayor of Detroit preferred an administrative officer appointed by the board of commissioners to an elected county executive.

Wayne County voters had defeated proposals to elect a charter commission in 1968 and 1972. By 1980, Wayne County was the only major urban county in the nation which had the power to reorganize its structure and had failed to do so. Of the 18 other 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 of over 250,000.

It was only after passage of Public Act 7 of 1980, which addressed many of the objections raised by local and state officials against the original charter county enabling legislation, that a Wayne County charter commission was approved by the electors.

C. Charter Adoption in Wayne County

The Wayne County Charter Commission. Wayne county voters approved the creation of a charter commission on August 5, 1980, and elected 27 charter commissioners on November 4 of that year.

Section 10(3) of Act 293 as amended protects the charter commission and its task from the board of commissioners existing at the time that the charter commission is conducting its business. The board "shall not take any action which is designed to restructure or reorganize the county government which would have the effect of diminishing the mandate of the charter commission." The board of commissioners is empowered by the state act to fill a vacancy in the charter commission it that body does not itself fill the vacancy within seven days, but the appointee must be a qualified voter from the same district and party as the prior incumbent.

Because the Wayne County Charter Commission, which was financed by a negotiated state appropriation, represented the only Michigan county with a population of 1,500,000 or more, the revised state act's requirement to submit two charter proposals, one containing an elected chief executive officer, the other an appointed chief administrative officer, was applicable.

Those documents were prepared by the charter commission and submitted to the governor as required by the state act, and in spite of concerns expressed by the state Attorney General, were approved by then-Governor Milliken.

Charter Adoption. On November 3, 1981, Wayne County voters adopted a charter "for the purpose of providing more efficient, responsive, and accountable government," and opted for a

county charter with an elected executive, the stronger of the two forms proposed. On November 2, 1982, county voters elected the then-Wayne County sheriff, William Lucas, to the newly created executive position, and elected fifteen commissioners to the redesigned county legislative body.

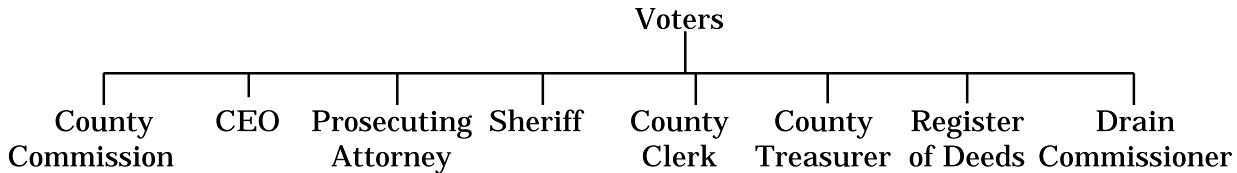
In January 1982, after the charter had been adopted, but before it became effective, the Wayne County Road Commission approved a labor contract with a newly formed Association of County Road Administrators, the object of which was to protect the status, wages, and fringe benefits of about 70 top road commission administrators for a period of six years.

Part III. The Wayne County Charter

The most important effect of the county charter was the restructuring of responsibilities and separation of powers between the legislative and executive branches.

A. Charter Mandated Structure

The state's first adopted county charter prescribed for Wayne County a new structure which included 15 elected officials in the legislative branch and 7 elected officials in the executive branch.



Terms of Office. In an effort to get the independently elected executive officials elected at the same election as the county executive and the governor, the charter commissioners sought to change their first term of office under the charter to two years. Thereafter, those officials would be elected for four year terms in the same general election as the governor and the chief executive officer. Members of the election commission, the drain commissioner, and the county clerk maintained that the provisions of the 1963 state constitution and state statutes requiring four-year terms not concurrent with the governor and CEO remained in effect. The courts determined that provisions of Article 7, Section 2 of the state constitution requiring four year terms of office for certain elected county officers prevailed even though Article 7, Section 2 allows counties to reorganize "in a form different than that set forth in this constitution." Further, the state Drain Code, which specifically provides for a four-year term of office, prevailed over the charter.

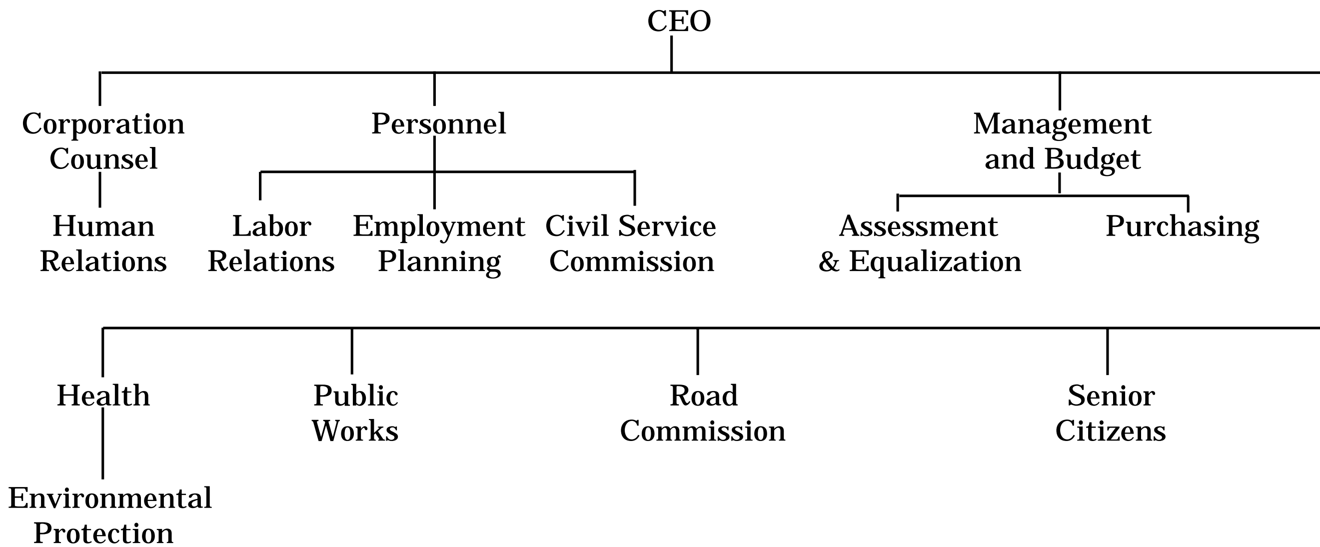
Charter-Mandated Legislative Structure. The charter established a 15 member board of county commissioners and permitted an optional auditor general to be created by ordinance, with appointment and supervision powers given to the county commission. The state enabling legislation did not require, and the Wayne County Charter did not preserve, the elected county board of auditors. This three member board was established in 1889 to relieve the part-time board of county commissioners of administrative responsibilities. The board of auditors, charged with accounting, administering, controlling, and guiding the county's finances, had its duties dispersed to the board of commissioners, and to the departments of county executive, management and budget, treasurer, auditor general, and the office of public services.

Charter-Mandated Executive Structure. The state law requires that, except for protected elective offices, a county charter must provide for the continuation or discontinuation of all existing county offices, boards, commissions, and departments. Section 15 states that a county charter may provide for the "office of corporation counsel, public defender, auditor general, and all other offices, boards, commissions, or departments necessary for the efficient operation of county government. The charter may also provide for the power and authority to establish, by ordinance, other offices, boards, commissions, and departments as may become necessary."

The Wayne County Charter directs the chief executive officer to submit a proposed executive branch reorganization plan to the county commission within 90 days of assuming office, but con-

tains certain provisions for specific organizational and functional units. Powers and duties delegated by charter to the departments of prosecuting attorney, sheriff, county clerk, county treasurer, register of deeds, and, prior to charter amendment, the drain commissioner could not be modified by the CEO's reorganization plan.

Article 4 - Executive Branch describes optional and mandatory organizational units which are to be subordinate to the CEO.



Article 4, Chapter 3 establishes the executive department of corporation counsel, which contains a division of human relations. A personnel department is comprised of three charter divisions: labor relations, employment planning, and civil service commission. The department of management and budget includes charter divisions of assessment and equalization, and purchasing. Environmental protection is established as a division of the health department. A department of public works is established by the charter, as is a department of senior citizens services, a retirement commission, and, in the original, unamended charter, a road commission. A planning division is required in the office of the CEO, and the cooperative extension service is required to be maintained in the executive branch. The powers and duties granted to the divisions of human relations, civil service commission, assessment and equalization, the department of senior citizens services and the retirement commission (continued by Section 6.112 to administer and manage the retirement system) may not be reorganized out of existence. Other agencies, departments, instrumentalities, boards, and commissions may be created by ordinance or reorganization plan.

The authority of the CEO is limited by the charter requirements for specific departments and divisions, some of which were included as a result of compromises made to appease special interest groups during charter development. An alternate home rule approach would have the charter define the goals and purposes of county government, leaving the organizational structure of nonelective offices to the chief executive officer. Adoption of the optional uniform form of county government avoids the problem of charter mandated and protected departments, and retains the county commission's authority to organize department structure.

B. The Legislative Board of County Commissioners

Powers and Duties. State Act 293 as amended defines the heart of the legislative function in

Section 14(i): "The power and authority to adopt, amend, and repeal any ordinance authorized by law, or necessary to carry out any power, function, or service authorized by this act and by the charter." But the act is silent on the organization, rules, and procedures that a county commission must follow in a charter county.

The adopted Wayne County charter is much more specific in its description of the powers and duties of the fifteen-member county commission in Section 3.115.

"(l) Adopt, amend, or repeal ordinances or resolutions.
(2) Appropriate funds, levy taxes, fees and other charges, and authorize borrowing in accordance with Article V.
(3) Approve the making of all contracts by the county.
(4) Approve or reject appointments by the CEO of the Deputy CEO, department heads, their deputy directors, and the members of boards and commissions in accordance with Article IV.
(5) Override a veto of the CEO by a 2/3 majority of Commissioners serving.
(6) Approve, amend, or reject rules or regulations issued by any department or officer of the County. If the Commission fails to act within 30 days of the submission of any rules or regulations, the rules or regulations become effective. The Commission may provide a procedure by which emergency rules and regulations become effective before their submission to the Commission.
(7) Require any county officer or employee to testify and to produce records and documents.
(8) Subpoena records, documents, and witnesses and administer oaths.
(9) Appoint and remove, by a majority vote of Commissioners serving, the members of the Board of County Canvassers, the Metropolitan Airport Zoning Board of Appeals, the Planning and Development Commission, and the County Election Board.
(10) Appoint and, within authorized appropriations, provide compensation for employees of the Commission. The Commission shall appoint a Commission Clerk who shall be responsible for maintaining official records of the Commission and other duties prescribed by the Commission. The Commission Clerk may be removed by a majority of Commissioners serving.
(11) Merge the department of Register of Deeds with the department of County Clerk or provide for their subsequent separation.
(12) Judge the qualifications of Commissioners.
(13) Submit amendments to this Charter for approval by the registered voters.
(14) Exercise any power granted by law to Charter or general law counties except those prohibited by this Charter.
(15) Establish the compensation of other elected officers as provided by law or ordinance."

The charter directs the commission's involvement in the budget making process. The commission must introduce the appropriation ordinance prepared by the county executive at least 105 days before the start of the fiscal year, hold departmental and public hearings, and adopt a balanced budget at least 30 days before the start of the fiscal year. The commission may amend the appropriation ordinance, and must reduce appropriations to avoid a deficit if the chief executive officer certifies a reduction in revenues.

Section 3.118 clearly demonstrates the intention of the authors of the charter to limit the power of the commission: "Except insofar as is necessary in the performance of the duties of office or as otherwise provided by this Charter, a Commissioner or an employee of the Commission shall not

interfere, directly or indirectly, with the conduct of any executive department."

Legislative Organization. The Wayne County Board of Commissioners directs four agencies: central services; public information; auditor general; and legislative research bureau. Only the auditor general is referenced in the charter.

Legislative Procedures. The Wayne County Board of Commissioners annually adopts rules of procedure, which govern meetings and public hearings; election, powers and duties of the chairperson and vice chairperson; duties of the commission clerk; committee memberships and procedures; duties and procedures for commissioners; voting processes; procedures for ordinances, resolutions and appointments; and organizational matters.

The chairperson of the commission appoints the chairperson, vice chairperson, and members of all standing committees, and may cast the tie-breaking vote by virtue of his ex officio membership on all committees, although he may not serve on any standing committee other than administration and rules, of which he is chairperson. The county charter mandates a ways and means and an audit committee; the rules of procedure describe all committees, including those established by resolution. Standing committees are ways and means with five members, audit with five members, administration and rules with three members, public safety and judiciary with five members, and health and community services with five members.

Rule 36, the procedure for ordinance and resolution processing, specifies that proposed ordinances be in writing, deal with only one subject, be distributed to each commissioner and the CEO and filed with the county clerk, be published in a newspaper of general circulation with a notice of public hearing, and receive two readings before the commission. All proposed ordinances that did not originate in committee must be referred to the appropriate committee as determined by the chairperson. The public hearing may be held separately or at a regular or special meeting of the commission, or may be held by the committee to which the proposed ordinance was referred. All ordinances require a majority vote of the commissioners serving, and all must be published in a newspaper of general circulation with a notice of adoption as soon as practicable after adoption.

Every ordinance or resolution having the effect of law must be presented to the CEO within two business days of adoption. The CEO may veto, but must return the action with a written certification of the veto and the reasons therefor within 10 days. The commission has one month after receipt of a veto to reconsider: a 2/3 majority of commissioners serving may override a veto.

All approved resolutions and ordinances are to be numbered and maintained in an indexed book. The rules of procedure state that the county "Commission shall provide for the preparation of a general codification of all County ordinances and resolutions having the effect of law."

An ordinance or resolution enacted by the legislative body is presumed valid until such time as it is declared invalid by a court of law. The corporation counsel may be asked to issue an advisory opinion about the legality of an action or a pending piece of legislation, but, while those opinions are derived from a body of legal knowledge, they do not constitute the law. It is the responsibility of the commission to maintain a clear and complete record of all enacted legislation, whether subject to legal challenge or not. However, an ordinance establishing public county hospital facilities passed on July 28, 1983 and vetoed by the CEO did not appear on the list of resolutions and ordinances consecutively numbered for 1983. Research staff discovered several other instances where there seemed to be no reference numbers for enacted resolutions and ordinances.

Rules providing for notice and due process in adopting ordinances and for record-keeping are important to insure public knowledge, and should be in a form that insures compliance. But rule 47 of the commission's rules of procedure provides that "Any rule of the Commission, except a Charter or statutory rule, may be altered or amended by a vote of two-thirds of the commissioners serving, provided that notice in writing of the proposition to amend or alter has been given at a meeting of the Commission immediately preceding the meeting at which the vote is taken. Any rule may be suspended for a single meeting by a two-thirds vote of the Commissioners serving, except those provisions of Rule 19 [?] (sic) which relate to the consideration by the Commission of new business." Rules that control public notice, due process, and record-keeping should be in a form that does not allow them to be circumvented, at a minimum in ordinance form, but preferably in the charter or state act.

C. The Executive Branch

Powers and Duties of the CEO. As noted, the state enabling legislation specifies minimum duties and responsibilities for the new position of chief executive officer. Wayne County voters selected the stronger elected chief executive office, whose duties are listed in Charter Section 4.112, Powers and Duties.

"(l) Supervise, coordinate, direct, and control all county facilities, operations, and functions except as otherwise provided by law or this charter;
(2) Implement and enforce the laws of this State and County ordinances, resolutions, orders, and rules;
(3) Exercise all powers and duties granted the CEO by law, ordinance, or other provisions of this Charter;
(4) Submit reports and recommendations to the Commission on any matter affecting the County;
(5) Exercise powers and duties required for emergency preparedness;
(6) Maintain a Planning division in the office of the CEO; and
(7) Veto any ordinance or resolution having the effect of law, or approving a contract, or any line item in an appropriation ordinance by transmitting to the Commission written certification of the veto and reasons therefor. If the CEO fails to exercise the veto within 10 days after the submission of the ordinance or resolution to the CEO, the action of the Commission takes effect."

The state act requires the executive officer to play a major role in county budget preparation and administration. The charter details the budget process in Article V - Finance, which directs the executive officer to prepare and submit a comprehensive budget for the county. Various aspects of the budget require the certification of the CEO: an explanation of proposed expenditures in subunit detail and the level of appropriations required for debt service, pensions, and the budget stabilization fund. The CEO must establish periodic allotments and a system of accounts, and must specify uniform accounting and expenditure procedures. He must file a written report on the financial condition of the county at least quarterly. He must recommend a schedule for program review of every county operation and must conduct those reviews and report them to the commission.

Both the state act and the charter require the executive officer to submit a five-year plan for financial recovery in the event of a budget deficit, another clear attempt to resolve one of the county's most critical issues.

The charter specifies that the executive officer, with the approval of the county commission, may enter into intergovernmental contracts, associate the county with an intergovernmental district or authority, accept the transfer of a function from a municipality to the county if the function is performed on a countywide basis, and provide contract services within a political sub-division.

Imposition of Financial Control in the Executive Branch. The Wayne County Charter, Section 4.111 states "The Chief Executive officer (CEO) is the head of the executive branch of County government. The CEO is given the responsibility to supervise, direct, and control county functions, but the authority to accomplish that goal is greatly diminished by the existence of other directly elected executive branch department heads. Although the CEO formulates the proposed county budget based on departmental requests, the state act reserves the rights of other elected executive branch department heads to appear before the commission to defend their budgets. Charter Section 4.272 states "Departments headed by elected officers shall exercise their powers and duties within authorized and allotted appropriations." By requiring that the adopted budget be balanced, that the CEO must propose and the commission must approve required appropriation reductions, and that payments may-be made only if funds are available, the charter commissioners attempted to reduce the financial independence of elected executive branch officers.

Dispersion of Authority in the Executive Branch. The function of the CEO is clearly defined in Charter Section 4.116: "The CEO shall supervise, direct, and control functions of all departments of the County except those headed by elected officials, and shall coordinate the various activities of the County and unify the management of its affairs." The state act protects the sheriff, prosecuting attorney, county clerk, county treasurer, and register of deeds, although the county commission has the power to combine the county clerk and the register of deeds.

The charter expanded the duties described in state statutes of certain elected officials. The prosecuting attorney continues to represent the state and county in all criminal and some civil cases, and the register of deeds records deeds and maintains land records. The sheriff, who must by law provide court security, jail operation, and process serving, must also patrol county parks and may contract with local units to provide services. The county clerk must maintain the county's central records and supervise and control the printing and duplication facility. The county treasurer must not only act as the collection agent and custodian of all funds, he must also receive, deposit, and invest county funds; collect current taxes assessed within the City of Detroit; determine, settle, and collect delinquent taxes; and act as county agent for the Delinquent Tax Revolving Fund.

The original charter added the drain commissioner to the list of elected county officials, and required him to submit an annual project plan to the CEO, and coordinate his projects with other county projects as directed by the CEO.

The existence and protection of units headed by elected officials severely limits the organizational authority of the chief executive officer. While he may appoint other executive branch department directors and deputy directors subject to commission approval, and may remove those appointees at his pleasure, he is unable to exercise direct control over elected officials and may not modify their charter-delegated powers and duties in a reorganization plan.

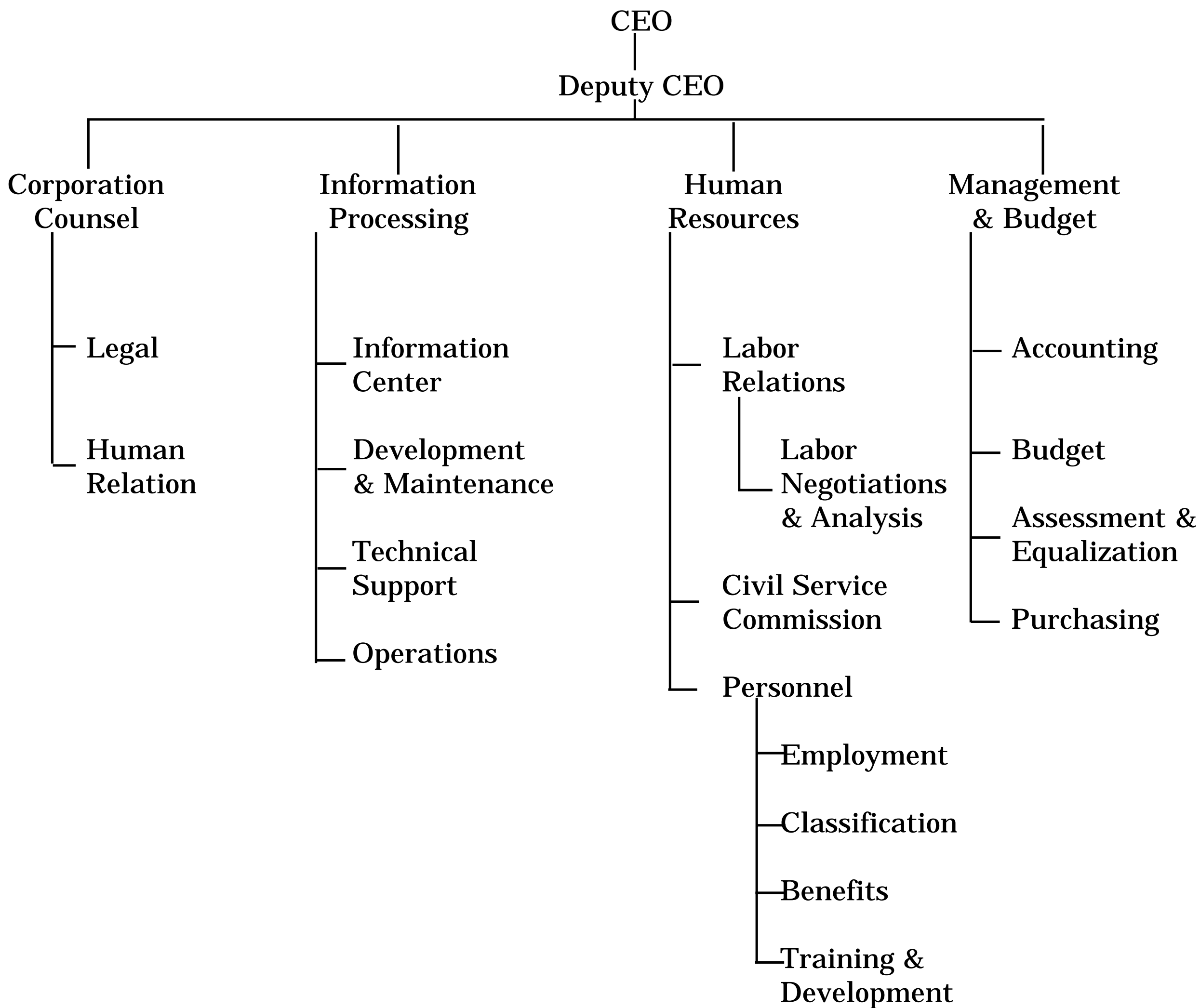
Limitations on the CEO. It is clear that the position of elected county executive is by no means all powerful. He shares administrative authority with other elected executive branch officers, and must obtain commission approval to appoint, reorganize, purchase, and regulate. While the powers of the county commission are greatly reduced, it does retain significant authority to restrain the power of the CEO.

Part IV. Executive Branch Reorganization

The first CEO-elect appointed a reorganization committee to develop a plan for the formal organization of the functions assigned to the executive branch. The plan that was developed reflected the numerous provisions of state and federal laws, regulations and grants that determine county functions. That plan was adopted by the first CEO and immediately submitted to the county commission.

A. Staff Agencies

Organization. Wayne County's initial reorganization as a charter county included four staff agencies (management and budget, human resources, information processing, and corporation counsel) and two line agencies (public services, and health and community services). "The Reorganization Plan of the Executive Branch of Wayne County Government." of January 1, 1983 contained staff departments arranged as follows:



It is through his control of staff agencies, particularly management and budget, that the chief executive officer can exert influence over the operations of executive branch departments headed

by elected officials. Indeed, the organization of staff agencies over which his authority was undisputed provided the CEO a potential measure of administrative authority over all county operations, including the legislative. This part of reorganization was the least complicated; it closely followed the pattern established in the charter and built on existing structures of county government.

Corporation Counsel. The placement of the corporation counsel's office in the executive branch meant that the county officer whose legal opinions interpreted the charter and state law applicable to county organization and authority served at the pleasure of the CEO, although the charter stated that "the department shall provide legal services to the Commission, the CEO, and all County agencies, and represent the county in all civil actions in which the County is a party." The appointment by the first county executive of the county prosecutor to also serve as corporation counsel contributed to the integration of that elected office into the restructured executive branch.

Several 1983 communications from the Wayne County Corporation Counsel stated that the corporation counsel would not initiate litigation on behalf of one department or branch of government against another, but would instead issue an opinion exploring the legal issues involved in the controversy.

In January 1984, the county commission sought the opinion of the corporation counsel as to the legality of two proposed ordinances, one of which would have established the already existing office of corporation counsel. That ordinance sought to impose sanctions on the director and deputy director and to make those appointees subject to dismissal by the county commission. The opinion issued in response indicated that the proposed ordinance, in those sections that did not reiterate charter provisions, violated Charter Section 3.118, which prohibits interference by the commission in the conduct of an executive department. The ordinance was not adopted.

The division of human relations was created in the corporation counsel department by Charter Section 4.314 "to provide advice to County agencies on matters of employment discrimination and contract compliance." The division, which has no independent enforcement authority, reports to both the county executive and the county commission, according to a September 1, 1983 corporation counsel opinion.

Information Processing. The reorganization plan established a department of information processing with four divisions: information center; development and maintenance; technical support; and operations. "This department will be responsible for acquiring and developing advanced technical skills, studying the benefits associated with emerging information processing areas, developing and enforcing standards and methods, and coordinating departmental information processing development activities. It will develop and maintain all systems countywide." The county's formal financial plan included implementing up-to-date computer and word processing technology as a primary county goal.

Prior to reorganization in 1983, county departments attempted with various degrees of success to computerize their own operations. Many data processing applications were developed up to and through the mid 1970s. Revisions to these systems have occurred as needs required, but these revisions have not been documented adequately, resulting in problems in resolving errors and in extensive manual support systems.

Four years after charter implementation, efforts continue to centralize financial systems to permit the production of complete, integrated financial reports. The general ledger and inventory compo-

nents are complete, while accounts payable and accounts receivable components are in process. A personnel records system is nearing completion, to be followed by a new payroll system. Software developed for commercial and industrial applications is being adapted by the county for governmental applications.

Efforts continue to develop an integrated data base for register of deeds, treasurer, and assessment and equalization functions, and to transfer existing retirement, payroll, tax roll, assessment and equalization, and elections systems to two new mainframe computers. A computerized cost recovery system is being developed, as is a system to assist the purchasing function.

The management letter accompanying the November 30, 1985 audit cited several material weaknesses in internal accounting controls, including failure to limit access to data files and lack of user review and reconciliation to EDP outputs. The letter also specified that "significant entry errors were noted which resulted in material adjustments to the accounting records." Failure to insure that entries are correct, timely, and complete results in faulty or absent management information.

Human Resources. Prior to 1983, the county commission appointed the members of the civil service commission, which met daily and served as the head of the personnel department in both policy matters and day-to-day operations, including setting qualifying scores for examinations, determining which applicants passed examinations, establishing and dissolving eligibility lists, and changing job requirements to fit particular candidates. The civil service commission appointed the personnel director, who served as the secretary to the commission and chief examiner of the county. The county commission appointed five of its own members to the labor relations board; the chairman of the board of commissioners nominated the director of labor relations, who served as secretary to the labor relations board. The labor relations board, through the director, set labor policy, negotiated contracts, and participated in the grievance procedure. The politically sensitive, independent labor relations department was smaller but more powerful than the personnel department, which was perceived by employees as being unfair, arbitrary and unreliable. According to a 1972 National Civil Service League report and a 1980 Efficiency Task Force report, the division of responsibility between the two departments contributed to persistent administrative problems and major problems in personnel management.

The charter established a personnel department, called the department of human resources in the reorganization plan, comprised of a division of labor relations under the direct supervision of the CEO; a division of employment planning to administer the classification plan, examinations, and employee appraisal plan; and the three-member civil service commission to hear and decide grievance cases. The civil service commission grievance procedure is now the exclusive hearing process for non-union classified employees, of which there are about 200 in county service. Unionized employees may elect either the grievance procedure established by collective bargaining or the civil service commission procedure.

Certain charter provisions relating to the personnel function were included to preclude the reoccurrence of perceived abuses. The requirements that at least four persons must hold positions in each classification, that entry into classified positions be by open competitive examination, and that notice of available positions and promotional exams be posted 30 days in advance fall into this category.

Reorganization of the human resources function proceeded in spite of a legal challenge by the previous personnel director, which resulted in a temporary restraining order prohibiting his

removal and appointment of a new agency head. This order was not applicable to the new position of director of the human resources department, according to corporation counsel and independent legal opinions, because the new position "directs a department of far greater responsibilities than the pre-Charter Civil Service Commission."

The dramatically reduced role of the civil service commission was illustrated in an April 1984 corporation counsel opinion which stated "that rules regarding the content and administration of the examination and the minimum passing score are determined by the director of the Department of Personnel through the division of Employment Planning and that the (Civil Service) Commission may only review the grievance of an examinee when the grievance is based upon an allegation that the examination did not comply with the rules of the Wayne County Charter or the rules established by the division of Employment Planning." But the director of human relations may not void examination results to avoid a CSC determination of a pending grievance based on a claim of examination irregularity, according to a January 15, 1985 opinion.

Another opinion, that of May 17, 1984, confirms that the CEO, through the department of human relations, sets salaries not negotiated through collective bargaining, except for elected officials and employees of the county commission.

Coordination of all aspects of the personnel function permitted the imposition of needed county-wide reforms. At present, only one county department, the probate court, asserts that it is the employer of record of its employees.

At the time of charter implementation, the practical result of the county practice of rolling flat cost-of-living rates into base salaries had distorted the relationship among pay rates, having a greater relative effect on lower salaries than on higher ones. Many years of such roll-ins had resulted in much higher than market rates for entry level positions. In addition, because contracts expired on different dates, settlements for different rates of increase had resulted in situations in which subordinates earned more in base pay than their supervisors.

The first CEO was elected in November 1982, after expiration of the American Federation of State, County, and Municipal Employees (AFSCME) contract in June 1982, and immediately began unofficial labor contract negotiations, followed by official negotiations in January 1983. The CEO declared impasse in August 1983, and imposed the county's last best offer, which included suspending COLA, days off without pay, changing the definition of the 40-hour work week to exclude what had been paid lunch hours, reducing the number of classifications, and lowering the rates of pay for entry level positions. However, the Michigan Employment Relations Commission ruled that the dispute should have been submitted to fact finding.

On November 4, 1986 the state supreme court refused to hear an appeal by the county of a lower court ruling that would compensate employees for concessions, including the elimination of COLA, from the August 1983 declaration of impasse to July 30, 1984, when the Michigan Employment Relations Commission determined the real impasse had occurred. In March and April of 1987, the county repaid some 2000 affected AFSCME employees $12.6 million; that payment was charged to the general fund and other operations in 1986.

Management and Budget. The Wayne County Charter created a department of management and budget with divisions of assessment and equalization, and purchasing. The director of the department is the chief financial officer, who is appointed by, and serves at the pleasure of, the CEO; approval of the county commission is not required for this appointment. The director of the

division of assessment and equalization is appointed by the CEO to a six-year term, and may be removed by the CEO for cause with the approval of the county commission. Charter Article 5-Finance requires the use of generally accepted accounting principles, and an annual audit and financial report prepared by an external auditor.

The elected county treasurer is responsible for receiving, depositing, and investing county funds, collecting taxes, and administering the delinquent tax revolving fund. The reorganization plan brought all financial sections except the county treasurer into the department of management and budget by adding divisions of accounting and budgeting.

The county's financial system had been a shambles: the state attempt to audit Wayne County books in 1979 had failed. Not only did the deficit require immediate attention, but fiscal strategy, development and implementation of accounting and payroll systems, computerization, staff training, and development of adequate management information systems also required immediate attention. Records were incomplete and administration faulty. The county could not determine which employees were covered by benefits, there were no reserves for some earned benefits, and management of risk and existing reserves was inadequate.

The centralized department of management and budget was designed to overcome these problems, and major improvements have been made. But significant problems remain. For example, there is still no integrated accounting and financial reporting system, and no dependable report that indicates the number of county employees. The "Notes to Combined Financial Statements" in the November 30, 1986 Annual Financial Report indicate continuing problems.

> "Actual and budgetary comparisons and related analyses are not being performed in a timely manner and acted upon by accounting personnel because improvements are required in the cost accounting system and in the recurring maintenance of the accounting records. These improvements would permit the accounting department to provide accurate interim financial information enabling the budgeting effort to monitor the comparisons throughout the year. Accordingly, a statement of revenues, expenditures and changes in fund balances - budget and actual in conformity with generally accepted accounting principles is not presented."

The management letter that accompanied the 1985 financial report indicated that maintenance of independent accounting records which contain material differences from, and are not reconciled to, centralized computerized records hinders effective accounting control. That letter states that accounting staff "are either not adequately trained to perform their assigned functions or are not being directly supervised," are not cross trained, and in some cases, due to transfers, do not meet minimum standards. This creates major problems for the county: "As demonstrated by the number of year-end adjustments, accurate, actual timely information is not provided by the financial accounting system."

B. Line Operations

Reorganization of the line operations to enable executive control and functional efficiency presented the greatest difficulty: more functions had to be accommodated and the charter offered less direction. Moreover, these were the service delivery functions on which the effectiveness of the county executive would be judged by county residents.

The January 1, 1983 reorganization plan established two line offices, those of public services and of health and community services, each headed by an assistant county executive. This brought to six the number of agency heads reporting to the county executive.

Public Works. A major problem facing the reorganization committee was the logical and efficient organization of the public works functions. Logic, and the use of similar workers, equipment and methods, would dictate that the maintenance of parks and roads, and perhaps the airport, should continue to be coordinated; maintenance of drains and roads ought to be coordinated. But of course the drain function was directed by the elected drain commissioner and drainage board, and the roads, airports, and parks activities were supervised by the historically independent, three-member Wayne County Road Commission.

<u>The Drain Commissioner</u>. The drain commissioner was responsible for supervising the petition and bid process, as well as the construction, inspection, and maintenance of “Chapter 8” drains (named after their statutory reference) which were constructed as a result of petition by individual property owners. The drain board was comprised of the drain commissioner, chairman of the county commission, and, in lieu of the chairman of the county board of auditors, the chairman of the ways and means committee, according to a November 25, 1985 corporation counsel description. The drain board had the same responsibilities for “Chapter 20” drains, which were constructed following petition by a community’s legislative body. Of the approximately 500 drains in Wayne County, about 400 are the older Chapter 8 drains. The remaining Chapter 20 drains account for a disproportionate amount of the work, which was contracted by the drain board to the drain commissioner’s office. Revenues for this function derive from assessments on property owners who benefit from the drains.

The Wayne County Charter continued the elected status of the drain commissioner, although the state enabling act did not so require. The drain commissioner reserved to himself considerable independence, as indicated by corporation counsel opinions issued in September and October of 1985. The earlier opinion responds to the question “as to where it states in the ‘Charter’ that funds under my jurisdiction, not belonging to the County of Wayne, must be deposited with the Treasurer’s Office.” The October opinion advises that personnel files of county employees who work in the drain commissioner’s office should be made available to members of the CEO’s staff.

The county commission’s attempt in 1985 to reduce the staff in the drain commissioner’s office from 26 to nine by transfers to other departments resulted in a corporation counsel opinion that the commission does not have the authority to transfer classifications and employees from one department to another, although the commission may reduce or increase the level of funding.

The charter did require the drain commissioner to submit an annual project plan and any amendments to the CEO, and it also required the drain commissioner to coordinate projects with other county activities as directed by the CEO. But the very next section, 4.271, stated “The powers and duties specifically delegated by this Charter to departments headed by elected officers shall not be modified by a reorganization plan.”

<u>The Road Commission</u>. The road commission, authorized under the 1850 Michigan Constitution, has been referenced previously as an example of the problems that beset Wayne County: poor management and questionable personnel practices. Prior to charter adoption the members of the road commission were appointed by the board of commissioners for six-year overlapping terms, and were charged with administering the county road system, operating Detroit Metropolitan and

Willow Run Airports, and managing the county parks system. Roads functions were funded by road user taxes, airports were funded by airport revenues, and parks were funded from the general fund. The road commission adopted its own budget and negotiated its own labor contracts. The original Wayne County Charter created a mandatory executive department of the road commission, headed by a three-member body appointed for four-year terms by the CEO with the approval of the county commission. The charter required that road commission members be qualified electors of the county, one from the most populous city (Detroit), one from another city in the county, and the third from a township.

Organizing Public Works. The reorganization committee interpreted the Wayne County Charter for organizational purposes in the form giving most structural authority to the executive officer. Various sections of the charter direct the CEO to supervise, direct, coordinate, and control county functions. Section 4.115 states "The CEO shall coordinate the project activities of the departments of Drain Commissioner, Road Commission, and Public Works which affect county roads. The Road Commission and the Director of Public Works shall submit an annual project plan to the CEO 6 months before the next fiscal year and shall notify the CEO of any change in the project plan within 30 days." The drain commissioner was elected, but as noted, he too was required to submit annual project plans and amendments to the CEO, and to "coordinate the project activities of the department with other County activities affecting County roads as directed by the CEO." (Section 4.263)

The reorganization committee used these charter directives to structure the office of public services with operating departments of parks, roads, airports, and public works. In order to strengthen the executive control of these functions, staff units were created within the office of public services to consolidate administration, planning, engineering, equipment, and building operation and maintenance. The separation of these units, particularly equipment, insured that the assistant CEO in charge of the office had knowledge and control of department operations.

Two charter revisions have legitimized the reorganization committee's recommended single, integrated office of public services. On August 7, 1984, after amendments to Act 293 and passage of Public Act 61 of 1984, county voters amended Sections 4.361, 4.362, and 7.117 of the charter to create the office of public services, responsible among other things for the county road system. The functions of the county road commission were divided between the CEO and the county commission, and the road commission was abolished.

The reorganization was completed on November 4, 1986 when county voters approved Proposal "D," eliminating the office of drain commissioner. This charter amendment split "the powers and duties of a drain commissioner between the executive and legislative branches in accordance with the general design of the charter."

Health and Community Services. All other line operations were grouped together under an office of health and community services. These functions were as disparate as the youth home, hospital, library, environmental protection, public health, cooperative extension service, medical examiner, senior citizens and mental health care. The problems encountered in the administration of the office of health and community services were significantly different than those inherent in the office of public works, but problems of integrating previously independent units did occur.

Organization of the Functions. A January 23, 1984 opinion from the corporation counsel addresses the question "whether the Detroit-Wayne County Community Mental Health Board

(Board) has the authority to create a deficit budget by reallocating funds in a manner and for purposes different than those specified in the general appropriation approved by the County's legislative body for the Mental Health Program." This intergovernmental unit, with appointees from Detroit and out-county, administers contracts to provide services to mentally ill and retarded children and adults. The county corporation counsel opined that the mental health board did not have authority to apply funds in a manner inconsistent with the county's appropriation ordinance or to determine whether or not a program ordered by the county would be included in their responsibilities.

Although there were some challenges to centralized control by the departments that were associated to create the new office of human services, the director was able to interpret her role as that of facilitator and advocate. Of the agencies combined, only public health, mental health, and the youth home had administrative staff much exceeding a director and a secretary; centralized performance of budgetary and personnel functions was effectuated without significant structural changes in the operating units. While no attempt was made to create staff units within this office as was done to consolidate administrative control in the office of public services, the structure combining all non-public service functions under a second assistant CEO created a balanced organization structure.

<u>State Determination of County Responsibility for Indigent Care.</u> The major problem in the health and community services portion of Wayne County government derived from the county's financial responsibility for medical and social services care which was mandated but not reimbursed by the state.

State law (MSA 16.470) declares "The county board of supervisors shall, within its discretion, make such appropriations as are necessary to maintain the various welfare services within the county, as provided in this act, and to defray the cost of administration of these services." The courts had determined that this precluded county boards from appropriating less money than that sufficient to maintain mandatory general assistance programs.

Prior to 1980, Wayne County had established eligibility criteria for the hospitalization of indigent patients, negotiated reduced rates with provider hospitals, authorized care, and received, audited, and paid bills. A series of state statutes radically changed the administration of the county indigent hospitalization program.

State Act 216 of 1979 provided that the state would pay hospitals for Indigent care at medicaid rates, based on eligibility information provided to the state by the county, and that counties would reimburse the state "for hospitalization of persons determined by the county department to be eligible under section 66a at a rate not less than the county department reimbursed hospitals during the county department's full fiscal year immediately before the effective date of this section." County reimbursement to the state was based on county-negotiated rates, with the state subsidizing indigent care by the difference between the county rates and Medicaid rates, but the required county reimbursement rate would increase annually based on the hospital cost index. This negated the county's right to set rates or adjust rates downward. State Attorney General opinions clarified that where there was no decrease in the number of eligible persons seeking hospitalization, the county was required to provide the same funding in 1980 and 1981 as in 1979, plus any amount attributable to an increase in the hospital cost index, and that where billings resulting from the hospitalization of eligible persons exceeded the county budgeted amount, the county must provide additional funds to cover such billings. Counties could not make rules of financial eligibility less restrictive than in the prior year.

Act 255 of 1982 provided for county reimbursement to the state of the total amount paid by the state to a county-owned hospital, and the total amount less $100 per patient-day paid by the state to all other hospitals. Counties for which the state had paid less than $2 million for indigent hospitalization in the prior fiscal year could elect to pay hospitals directly in accordance with their own reimbursement principles.

Wayne County costs were affected by the cost of care at Detroit Receiving Hospital, which, as the trauma center for the Detroit Medical Center Complex, had per them costs that averaged twice those at other hospitals. Detroit Receiving Hospital was the replacement for Detroit General Hospital, which had been known in the central city as the poor people's hospital, closed by the City of Detroit when subsidy costs became excessive. State statutes that guaranteed timely reimbursement at Medicaid rates were essential to the viability of Detroit Receiving Hospital.

While the bulk of Detroit's poor used the high-cost Detroit Receiving Hospital, many out-county indigents were served by Wayne County General Hospital.

Wayne County General Hospital. Charter Section 3.117 states "The Commission shall provide by ordinance for the operation, maintenance, and administration of public County hospital facilities and shall assure an adequate level of physical and mental health services for the residents of the County." Appointment and operating authority belonged to the CEO. The problem with Wayne County General, which was opened in 1832, was the same that had forced the closing of the City of Detroit hospital: it required substantial operating subsidies, as indicated by the following figures from county Annual Financial Reports.

WAYNE COUNTY GENERAL HOSPITAL

Fiscal Year	Revenues	Expenditures	Loss
1982	$41,331,661	$58,527,061	$17,195,400
1983	40,502,658	58,247,816	17,745,158

Hospital employees represented about one quarter of all county workers, and they were paid substantially above the levels in private hospitals. The problem was exacerbated by Act 255 of 1982, which excluded county-owned hospitals from the state subsidy for indigent hospitalization.

Although the county is responsible for financing some part of the costs of indigent care for county residents, a circuit court ruled that the county could sell or lease the 340-bed Wayne County General Hospital. In August of 1984, in spite of legal challenges and an ordinance passed on override which designated Wayne County General as the hospital mandated in the charter, the facility was leased to Southwest General Hospital for ten years, with an option to buy for $15 million. In May 1987, the county commission approved an amendment to the lease, modifying the terms of the purchase price option and agreeing to sell the facility to a consortium of area hospitals.

County Debt Settlement. A Michigan State Attorney General's opinion of April 12, 1982 confirmed that county departments of social services boards had authority to adopt administrative measures to achieve cost savings, in addition to making eligibility requirements more restrictive. Many of the indigents funneled through the emergency room at Detroit Receiving were suffering from drug and alcohol related health problems which were not believed by county officials to require high cost, intensive care. One of the initial acts of the first county CEO was to stop paying

the state for indigent care, and to pursue alternative methods of meeting county obligations, including implementation of a patient management system that transferred indigent patients to lower-cost facilities.

According to county records, state bills to the county for indigent care totaled $10.8 million in 1979-80, $17.7 million in 1980-81, $22.5 million in 1981-82, and $31.1 million in 1982-83. By the end of fiscal 1983 the county owed the state at least $66.3 million for indigent care, plus an estimated $34.6 million for the community mental health shared management and state institutions programs, plus about $15.7 million for the state ward charge back program, an estimated total of $116.6 million. Neither the county nor the state could document the actual amount of the debt: county records were incomplete, state department of social services records were on a cash basis, and the state department of mental health used a modified accrual basis.

An agreement to repay obligations owed to the state on November 30, 1983 and February 29, 1984, formalized by a consent Judgment, was negotiated between county officials and representatives of the governor, state attorney general, and state treasurer. The State of Michigan forgave $27.1 million owed as of November 30, 1983. The county agreed to repay $89.5 million over ten years: $8.55 million annually in 1984 through 1988, and $9.35 million in 1989 through 1993. However, the agreement provided that if county costs for Indigent care exceeded $3.95 million in a year, which they were certain to do, the amount of payments in excess of $3.95 million up to $8.55 million in 1984 through 1986, $7 million in 1987 and 1988, and $6 million in 1989, would be forgiven. Thus only $43.85 million of the $89.5 scheduled was expected to be repaid. Interestingly, the state wrote off the entire $89.5 million of receivables in fiscal 1983, thereby reducing the general fund surplus in the first year of the temporary state income tax increase. The costs incurred from the end of fiscal 1983 until February 29, 1984 totaled $17.9 million; these costs were also forgiven by the state. Thus this Wayne County debt was not paid, but instead was shifted to the taxpayers of the State of Michigan and to the future taxpayers of Wayne County.

The debt settlement agreement negotiated in 1984 included a plan for payment of future general assistance medical-hospitalization obligation, which was reflected in the language of Public Act 246 of 1984, Section 121, and subsequent appropriation acts. Act 246 of 1984 provides that counties for which state payments to hospitals for indigent care exceeded $2 million in the prior year, may establish patient care management systems in which the county negotiates hospital reimbursement rates and contracts with hospitals for patient care. "Under this system, the county may establish rates of reimbursement for hospitals and may contract with hospitals and other health care providers for care of eligible persons if there are sufficient contracts to assure that eligible persons have reasonable access to necessary hospital services, including emergency and trauma care, and that the rates established by the county are reasonable and adequate to assure such access." The cap on this program, which requires use of eligibility standards employed prior to July 1, 1983, is $32 million; the state share is $19.5 million. Billings by the state to the county are 100% of the costs in a county-owned facility and 30.8% of the costs in other hospitals, until the state funds are exhausted. All expenses over $32 million are a county responsibility. This agreement did not provide for adjusting the cap based on inflation or experience, or modifying the funding formula.

Problems in certifying eligibility and tardiness of hospital billings have resulted in some requests for county reimbursement being received as much as two years after services were provided; this complicates the determination of annual costs. However, in no year since implementation of the patient care management system have costs failed to exceed the cap: according to the annual

financial report, 1984 county costs were $29.1 million. Reported county costs for 1985 were $24.0 million, and for 1986, $31.8 million. Because the county budgets only $12.5 million, the difference between the state share and the cap, the cost in excess of the negotiated county share contributes to the county's annual deficit.

A financial review committee appointed by the new CEO-elect in 1986 added $48 million to the estimated county debt based on a theory that a large proportion of bills payable by the county for services rendered by county hospitals under the Patient Care Management System have not been received by the county. This $48 million was supposed to represent amounts not yet billed by the state for services rendered from program implementation in March 1984 to November 30, 1986. However, state interim payments to hospitals for current service costs are based on the previous quarter bill from each hospital. These payments are then reconciled to actual bills based on date of service. Although hospitals may take up to five or six months to bill the state, the state forwards those bills to the county in about one month, absent any problems. State employees who administered these payments estimated that the maximum possible unbilled amounts,, since program inception, could not have exceeded $15 million.

Total County Welfare Costs. Wayne County expenditures for health and welfare, exclusive of Wayne County General Hospital, from the general and special revenue funds, are consistently reported beginning with the annual fiscal report for 1982.

WAYNE COUNTY EXPENDITURES FOR HEALTH AND WELFARE

Fiscal Year	General Fund	Special Revenues	Total
1982	$40,810,585	$ 77,222,292	$136,542,273
1983	47,060,023	78,599,666	125,659,689
1984	1,559,575	151,847,184	153,406,759
1985	3,461,032	165,299,693	168,760,725
1986	3,165,697	220,359,807	223,525,504

* as amended in the 1983 financial report

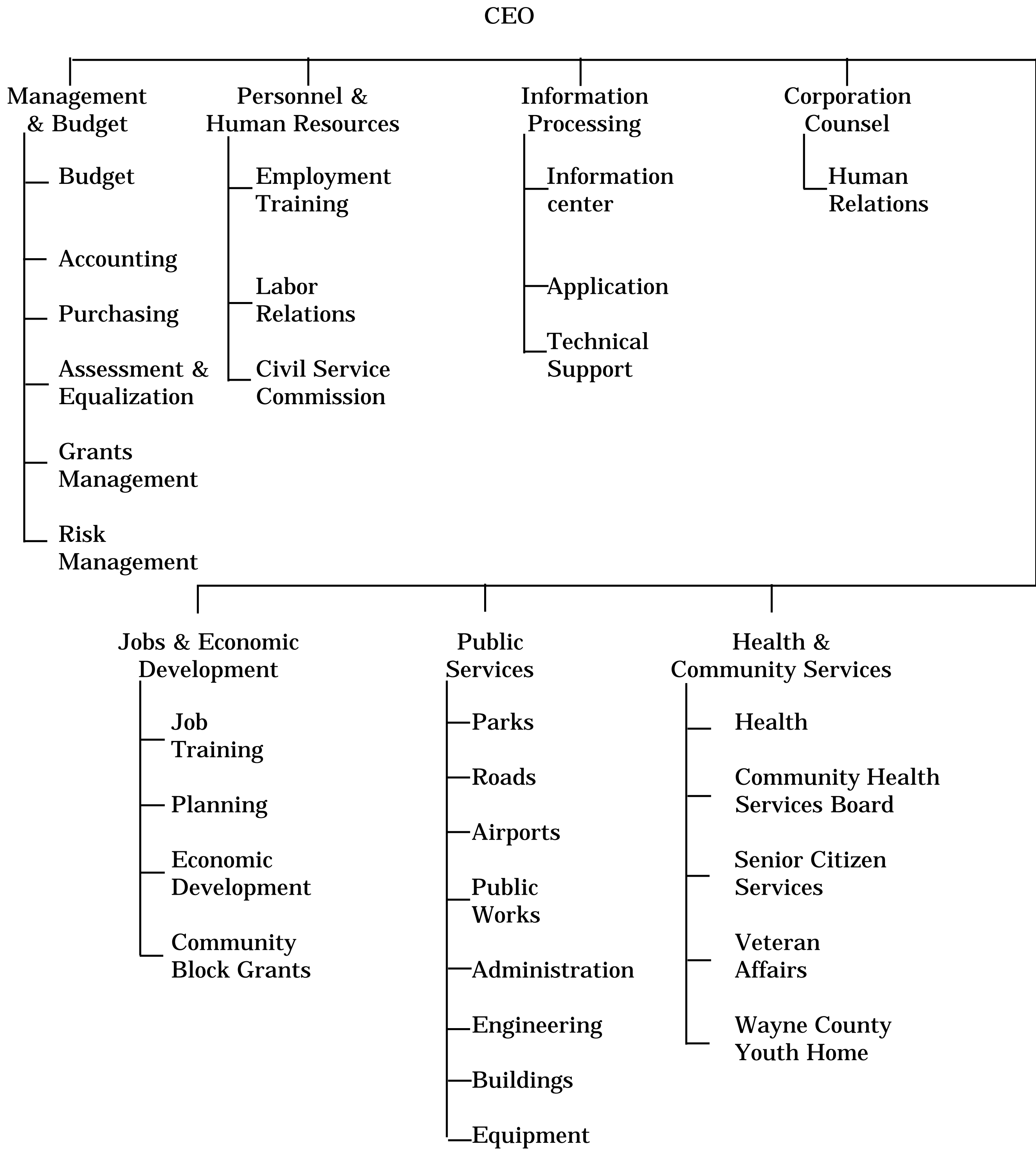
County expenses for health and welfare, exclusive of hospital operations, grew by 22% from 1983 to 1984, by 10% from 1984 to 1985, and by 32% from 1985 to 1986; total growth from 1983 to 1986 was $97.9 million or 78%. During that period county general fund property tax revenues derived from the 7 .07 mill levy declined by 3.6%, from $131.0 million in 1983 to $126.3 million in 1986.

C. Reorganization Under the Second Wayne County Executive.

The second Wayne County CEO, who had served as the mayor of Livonia from 1970 to 1986 and assumed the position of Wayne County CEO in January of 1987, proposed a reorganization plan that maintained the basic organizational structure established four years earlier, but redefined the offices of public services and of health and community services as departments. Two new divisions, grants management and risk management, were established in the department of management and budget; in the department of information processing the division of development and maintenance and the division of operations were combined into a division of application. A major change in structure was the establishment of a department of jobs and economic development, to be responsible for "coordinating the activities of business assistance attraction, and job

training, grant administration, planning and other programs designed to increase employment and expand the tax base of the County."

The new department consisted of four divisions: job training, planning, economic development, and community block grants.



Three county agencies, the Wayne County Private Industry Corporation, Wayne County Economic Development Corporation, and the Detroit/Wayne County Port Authority, report to the director of the department of jobs and economic development. The cooperative extension service and the Wayne County Public Library report to the director of the department of health and community services.

In the reorganization plan submitted by the first CEO, departments were retained at the pre-charter level of organization, with directors and deputies appointed in accordance with charter section 4.385. Where intense coordination of departmental functions was desired, an "office" comprised of those functions was established; those offices were headed by assistant county executives, on-site administrators who were not department heads, but were appointed members of the CEO's executive staff.

The reorganization plan submitted by the second CEO transformed those coordinating offices into departments, and the prior departments into divisions, and reserved to the CEO appointment authority not only of department heads and deputies, but also of division heads and chief assistants. "Each division will be headed by a Director and a Chief Assistant, appointed by the Chief Executive Officer and not subject to County Commission approval; with the exception of the division of the Civil Service Commission ... Division Directors and Chief Assistants will not be a part of the classified service." The charter states "The Deputy CEO, directors, deputy directors, members of boards and commissions, representatives of the County on intergovernmental bodies, and all other officials and representatives not in the classified service shall be appointed by the CEO with the approval of a majority of Commissioners serving." By converting executive staff positions into department head positions and extending the executive appointment authority to the division assistant level, the CEO advanced his appointment authority further into the organizational structure, to an operational level not anticipated directly in the charter. Further, the charter requires county commission approval of CEO appointments.

Part V. Implementation of Checks and Balances in the Charter County of Wayne

Theoretically, the legislative and executive branches are coequal, each with its own authority within its own sphere. In order to maintain an equilibrium between the branches, each is Allocated specific powers to prevent the dominance of the other branch and to act as a check on the abuse of authority. These powers are exercised through an interaction between the two branches, allowing neither the executive nor the legislative to govern unilaterally. The process is traditionally called separation of powers, but may be understood better as a sharing of power. The executive shares the power to appoint when the legislature must approve his selections; acts of the legislature may be vetoed, a sharing of the power to make laws, and vetoes may be overridden.

As noted previously, one purpose of county reorganization was to install a system of checks and balances which would insure better administration and more responsible decisions. The charter removed authority from the legislative branch and granted authority to the executive branch. The exercise of remaining authority by the county commission was limited by checks and balances, but the authority of the CEO was also limited by this system of shared power.

A. Reorganization

The charter directed the CEO to submit a proposed executive branch reorganization plan to the county commission for their approval. "This plan may provide for the creation or abolition of any department, agency, division or officer not expressly exempted by this charter." (Section 4.113) As noted previously, the reorganization committee proposal was submitted by the first CEO and approved by the county commission, which nonetheless subsequently attempted to unilaterally amend the county structure.

The reorganization plan submitted to and approved by the county commission omitted the Wayne County Soldiers' and Sailors' Relief Commission. But the county commission adopted ordinance 84-109 on May 3, 1984, retroactive to January 1, 1983, continuing the soldiers' and sailors' relief commission, with members appointed by probate judges. One of these appointees asserted he was a duly appointed member of the relief commission, and sued for back pay. The suit was amended to include the two other previous members. The court denied plaintiffs' motion, cited charter section 4.113, affirmed that the CEO proposes and the board of commissioners approves, and stated in the opinion "Any ordinance proposed by the Board, as opposed to the county executive, which would have the effect of amending the reorganization plan would thus be invalid."

On the other hand, a June 15, 1983 corporation counsel opinion clarified that the CEO's appointment of a "director" is ineffective to create a department outside the officially adopted reorganization plan, although the CEO's appointment of a director of the office of emergency preparedness, a function charged to the CEO by the charter, was cognizable as an addition to the staff of the CEO, not subject to commission approval.

B. Appointment and Removal

The powers of appointment and removal are crucial to an executive attempting to exercise coordination and control of the operations in an organization.

Appointment. The county CEO was granted appointment authority in the state charter county enabling legislation, which sought to create a strong executive. Section 11(8)(e) of the state act describes the executives role: "Except elected officials, appoint, supervise, and at pleasure remove

heads of departments and all boards and commissions." The Wayne County Charter limited that power, allowing the commission to retain very limited appointment powers (members of the board of county canvassers, metropolitan airport zoning board of appeals, planning and development commission, county election board, auditor general, and their own staff) and requiring commission approval of all CEO appointments except the chief financial officer, a significant limitation on the authority of the CEO. Section 4.385 of the charter states: "Unless otherwise provided by this Charter or law ... The Deputy CEO, directors, deputy directors, members of boards and commissions, representatives of the County on intergovernmental bodies, and all other officials or representatives not in the classified service shall be appointed by the CEO with the approval of a majority of Commissioners serving."

Although an appointment by the CEO legally became effective upon confirmation by the county commission or expiration of 30 days after submission if the commission failed to act, on January 5, 1983, the commission resolved to facilitate the orderly transition of government by allowing the CEO's appointees to assume their duties immediately and receive payment, subject to subsequent confirmation or disapproval.

The authority of the chief executive officer to appoint and remove represented a major transfer of power from the county commission to the CEO. As would be expected, this became a central point of confrontation, and the issue in numerous lawsuits, between the legislature and the executive. The limiting phrase "unless otherwise provided by law" created ambiguity that the commission sought to exploit.

Corporation Counsel Opinions. Various opinions of the county corporation counsel conclude, as does a June 7, 1983 letter to the county commission, that the CEO "has the exclusive authority to make appointments to county and intergovernmental boards, commissions, and agencies when no other appointing authority is expressly identified in the Charter or by a State law which was enacted subsequent to Act 7 of 1980, which mandated that the chief executive officer of a charter county have appointing authority." The timing of the state law which identified the appointing authority was critical because prior to the adoption of a home rule charter, the most logical appointing authority in a county was the board of commissioners. County corporation counsel opinions did uphold the right of the county commission to appoint to independent units such as the port authority, where the unit's bylaws, approved by the governor in 1981, indicate commission appointment. Where the bylaws merely indicate that two county commissioners will serve on the board of directors, the CEO has authority to select those commissioners, according to a June 1, 1983 opinion.

The Wayne County Corporation Counsel opined that the CEO must appoint the county representative to the tax allocation board, even though the Property Tax Limitation Act of 1933, which specified the board of county commissioners as the appointing authority, was amended subsequent to the enactment of Public Act 7 of 1980. That amendment established a permanent allocation of millage for charter counties, but left the section of the act relative to appointment by the county commissioners intact.

Another opinion in April, 1984 gave appointment authority over the county member of the governing board of the Southeast Michigan Transportation Authority to the CEO.

The corporation counsel advised that the CEO, rather than the chairperson of the board of commissioners, had authority to appoint the seven members of the officers compensation commission, upon recommendations from the board and subject to confirmation by the board.

The power to appoint was limited by the drafters of the charter in an attempt to address the perceived problems of patronage. Section 7.115 provides that an elected county officer or a member of an appointed board or commission may not be hired or appointed to a compensated county position for one year after leaving office, but "This restriction does not apply to officers elected prior to the effective date of this Charter." Interestingly, in addition to extending his appointment authority to the division assistant level, the second CEO appointed a member of the county commission to the position of corporation counsel. That individual was first elected to the Wayne County Board of Commissioners in 1972, and most recently elected in 1984, the year following charter implementation; he did not seek reelection to the commission in 1986. This appointment was not challenged. The limitation on the CEO's appointment power seems to have no real advocate; the CEO would be expected to resist any limitation, and the county commission, members of which had benefited from such appointments in the past, was the group at whom the limitation was aimed.

Ficano v Lucas (131 Mich App 642, 1984; lv den 418 Mich 945, 1984). The Wayne County Charter commissioners attempted to extend the CEO's power of appointment to vacancies in elected offices in Section 2.212: "The method of electing and qualifications of the Prosecuting Attorney, Sheriff, County Clerk, County Treasurer, Register of Deeds, and Drain Commissioner are those provided by law. If permitted by law, a vacancy in any office shall be filled by the appointment of the CEO with the approval of a majority of the commissioners serving. A successor shall be elected, for the unexpired term if any, at the next regularly scheduled County general election."

In November 1982 Wayne County voters elected the then-serving Wayne County sheriff to be the first Wayne County executive, which created a vacancy in the office of sheriff. On December 22, 1982, the county clerk, county prosecuting attorney, and the presiding judge of the county probate court met under provisions of Act 199 of 1923, which provides for those county officers to appoint a suitable person to a vacancy in the office of sheriff. They appointed the deputy county clerk to become sheriff on January 1, 1983, when the office became vacant.

When the newly elected CEO resigned the position of sheriff, he appointed his former undersheriff to the office of sheriff. The county commission approved this appointment, thereby creating a conflict based on the different appointment powers of the charter and general county law.

The principals involved filed suit for summary judgment, and the Circuit Court ruled against the CEO. The court cited the enabling legislation which "forbids a CEO from making appointments of county elected officials." The state law enumerates the powers of the CEO: "Except elected officials, appoint, supervise, and at pleasure remove heads of departments and all boards and commissions." Because the enabling legislation was interpreted as restricting the charter provision granting appointment powers to the CEO, the former deputy clerk was declared Wayne County sheriff.

Removal. In order to appoint, the CEO had in some cases to remove. Charter Section 8.118 states "Persons holding unclassified positions in agencies, departments, instrumentalities, boards, commissions, and other administrative units of the County on the date this Charter becomes effective continue to hold those positions until successors are appointed in accordance with this Charter, the entity in which the position is held is abolished or displaced, or the CEO removes the person, whichever is earlier." Attempts to remove members of the road commission and Wayne County Economic Development Corporation resulted in significant court cases.

Lucas v Board of County Road Comissioners (133 Mich App 268, 1983; lv den 418 Mich 945, 1984). The question of "which law applies" was the central issue in this suit challenging the authority of the CEO to remove and appoint pursuant to the charter. Upon assuming office, the county's first CEO moved quickly to gain control of the road commission; the issued moved to the courts. **William Lucas v Board of County Road Commissioners of the County of Wayne** determined whether the new CEO had the authority to remove incumbent road commissioners and appoint replacements. The court of appeals affirmation of January 1984 became the basis for several county corporation counsel opinions confirming the appointive powers of the CEO. The ruling indicated that state law prevails over local charters and pointed out that Act 300 of 1982, which amended the Charter County Act requiring that the charter in a county of over 1,500,000 population "must give the CEO the power to appoint and remove road commissioners." The decision also affirmed that the provisions of the Michigan Charter County Act are considered to form a part of a local charter whether or not they are repeated in the charter: "statutory provisions, by virtue of their enactment into general law, form a part of the charter whether or not repeated therein, fill in the gaps, and supersede any possible conflicting provisions actually contained within the charter."

The Wayne County Corporation Counsel described the steps necessary to determine which of two conflicting statutes prevails: "First, the language of each statute, must be reviewed to discern which of the two is more specific and exclusive. Second, if the more specific statute was enacted subsequent to its more general counterpart, the more recent statute may be said to have implicitly overruled the earlier law in circumstances where its specific provisions apply."

The CEO was authorized to remove the incumbent road commissioners and appoint replacements subject to the approval of the county commission. This ruling not only established critical authority for the CEO, but was essential to the effective reorganization of the executive branch. As previously noted, the board of road commissioners was abolished by a charter amendment passed August 7, 1984.

Fitzpatrick, MacDonald, and the EDC v Lucas et al. Although a corporation counsel opinion of November 16, 1983 assured the CEO that he had authority to remove members of the Wayne County Economic Development Corporation (EDC), a circuit court decided otherwise on June 28, 1984. MacDonald had been appointed to the EDC for a six-year term, but was discharged by the CEO prior to the expiration of that term. Although plaintiff Fitzpatrick, the executive director of the EDC, was found not to have standing to sue either in his own right or on behalf of the EDC, the court did grant relief to MacDonald, one of four directors removed by the CEO, on the basis that the Wayne County Charter delineated the authority of the CEO to discharge with the phrase "Unless otherwise specifically provided by this Charter or law." The court ruled that the CEO did not have the power to remove EDC directors "because there is a law which specifically provides otherwise. Section 4(6) of the Economic Development Corporations Act, MCLA 125.1604(6), provides: A director may be removed from office for cause by a majority vote of the governing body .... Defendants argue that Section 4(6) of the Act is superseded by the charter provision. They reason that this result is mandated by Section 36 of the Act, MCLA 125.1636, which provides:

> "The authority given by this act shall be in addition to and not in derogation of any power existing in any of the municipalities under any statutory or charter provisions."

The court stated that "Defendants' reliance on this provision is misplaced. The charter does not give the CEO the power to discharge. Section 4.385 of the charter clearly prefaces its application to situations not otherwise provided by law. There is, and was, on the date of the adoption of the

Charter, a law which provided otherwise."

The court quoted the charter counties act, which provides that general statutes continue in effect "except: (1) to the extent that the Charter Counties Act permits the Charter to provide otherwise; (2) and, if the Charter does, in fact, provide otherwise." The court found neither of these conditions to be satisfied.

Nonetheless, various county corporation counsel opinions verified the CEO's right to appoint and to remove members of boards and commissions and department heads at his pleasure, even though those office holders had been appointed to specific terms. "It is settled law in Michigan that office holders have no contract rights or vested public rights to public office."

C. Confirmation

The exercise of the powers to appoint and to confirm embodied the conflict between the executives efforts to gain control over a fragmented and decentralized organization and the commission's long-standing custom of appointing administrative officials. Charter Section 4.385 states: "If the Commission fails to act on an appointment within 30 days after its submission to the Commission, the appointment is effective." The initial system established by the commission to process appointments by the CEO involved referral to a standing committee, which would report a recommendation to the committee of the whole, which would refer the matter to the county commission for action at the regular semimonthly meetings. Because this unwieldy process took so long, the commission attempted to redefine by ordinance the 30-day period so that it would begin at the next regular meeting of the commission, rather than on the day of transmittal by the CEO. The corporation counsel advised that this would be in direct conflict with the charter, but did allow that if the final day of the 30-day period fell on a Saturday, Sunday, or holiday, the period would be extended to the next regular business day.

The amended rules of procedure required that the names of appointees-be referred to an appropriate standing committee, which acts as a credentials committee and may interview the nominee, and which recommends approval or rejection of the appointment to the commission.

The commission challenged the authority of the CEO to resubmit for appointment the names of candidates who had been rejected previously by the commission. On June 15 and 17, 1983 the CEO submitted the names of three candidates to head the office of health and community services, department of human resources, and office of public services. All three were rejected on July 7. About a week and a half later, two of the names were resubmitted; they were approved on August 18. The third name was resubmitted on August 26, and was again rejected on September 22. A commissioner then proposed in a draft ordinance to prohibit the CEO from resubmitting the name of any candidate previously rejected by the commission. The corporation counsel advised that the commission lacks the authority to restrict the choice of the CEO.

The commission proposed to provide by ordinance that an appointment become effective only with express confirmation of the commission. That would be in direct conflict with the explicit language of the charter, which states that if the commission fails to act within 30 days, an appointment automatically becomes effective, according to the corporation counsel.

Although department directors and deputies require confirmation, the position of director of labor relations, a division of the department of human relations, does not, according to another advisory by the corporation counsel.

The plight of the Wayne County Library Board indicates the complicated maneuvering that resulted from the fight for control over boards and commissions. That board is comprised of four appointed members and the intermediate school district superintendent, ex officio. The county commission appointed a person to fill a vacancy on the library board about November, 1983. Before that appointment was determined to be void for lack of appointing authority, the commission appointee and two other board members voted to sever the county contract with the Wayne Oakland Library Federation (WOLF) and to fire the chief administrator who served as the county librarian and the head of WOLF. on January 4, 1984, the CEO appointed a member to the library board. The next day, the board met with the unconfirmed CEO appointee and rescinded the cancellation of the contract. The county commission then voted to reject the CEO's appointee. In both the votes to cancel the contract and to rescind the cancellation, the deciding vote was cast by an invalid appointee. Eventually the commission did approve the CEO's candidate, but the library board was without a working majority for many months.

As might be expected, the county road commission was also the scene of some complicated maneuvering. As soon as an injunction preventing the removal of incumbent road commissioners was lifted, the CEO attempted to assert control by appointing an interim road commission, which promptly met, appointed a managing director, and delegated to him all administrative functions. At about the same time, the CEO submitted the names of three proposed permanent road commissioners to the county commission. On March 22, 1984, the county commission rejected all three interim appointees and two permanent appointees. Another appointee was rejected on April 5, but on May 10 one candidate was rejected while another was confirmed, giving the road commission a majority of two out of three commissioners.

D. Administrative Rules

The CEO's success in performing the role described for him in the charter is contingent on his ability to impose and enforce rules. This crucial management area is also subject to checks and balances: the board of commissioners is given the authority to "Approve, amend, or reject rules or regulations issued by any department or officer of the County."

In September of 1983, the board of commissioners requested a corporation counsel opinion on the legality of executive orders and an administrative personnel regulation directing the inclusion of COLA into the base salaries of certain classifications. The corporation counsel advised that those orders and resolutions "implement a matter of executive policy and do not require Commission action or approval." That opinion distinguishes between "rules and internal departmental policy, rules referring to orders or actions of a governmental unit relating to the actions of those under its control for the conduct of third persons dealing with it." Executive orders and departmental resolutions do not directly affect the public, and therefore do not require commission approval.

The board of commissioners' subcommittee on executive orders in December 1983 requested a corporation counsel review of a proposed ordinance which distinguished "executive" and "administrative" orders and limited the purposes of each. The opinion rendered in response was clear: "... the subcommittee attempt to limit executive authority by an ordinance which constrains the CEO's discretion within the performance of that office is an impermissible intrusion of the legislative branch of county government into the Executive function."

However, a November 22, 1985 opinion advised the CEO that the charter permits the county commission to amend rules issued by the CEO at any time, regardless of the charter's provision that "If the Commission fails to act within 30 days of the submission of any rules or regulations, the rules or regulations become effective."

E. Veto and Override

The county commission is the supreme law making authority for the county; its enactments have the force of law unless successfully challenged in court. The executive veto permits the CEO to protect the executive from an assault by the legislature and to protect the people from bad law. Through use of the veto, the executive is able to participate in the law making function and to thwart the passage of hasty and ill-conceived laws. A veto may be used to obtain compliance with executive policy or to notify the legislative body that a basic disagreement in policy exists. The commission must then review the matter and may reaffirm its policy by a substantial majority. Once a veto is overridden, the executive has no recourse but to enforce the law. The process of legislative action, executive veto, and legislative override is a classic example of checks and balances which Wayne County obtained only after charter implementation.

The charter county enabling legislation provides for veto and override in Section 11 (9):

> "The elected county executive may veto an ordinance or resolution adopted by the board of commissioners including an item of an ordinance which appropriates funds. The veto shall be certified by the elected county executive to the board of county commissioners not more than 10 days from the date of adoption of an ordinance or resolution. The county board of commissioners may override the veto by a 2/3 vote of the county board of commissioners elected and serving."

Section 4.112(a)(7) of the Wayne County Charter specifies that the CEO has the power to:

> "Veto any ordinance or resolution having the effect of law, or approving a contract, or any line item in an appropriation ordinance by transmitting to the Commission written certification of the veto and reasons therefor. If the CEO fails to exercise the veto within 10 days after the submission of the ordinance or resolution to the CEO, the action of the Commission takes effect."

The charter also requires a 2/3 majority vote of the county commission to override a veto.

The veto power provided in the state legislation is broader than that specified in the Wayne County Charter, which extends the veto only to resolutions having the force of law. Unfortunately, there is no definition to distinguish those resolutions which have the "effect of law" from other resolutions. The charter does state in Section 3.115: "Powers and duties of the Commission shall be exercised by ordinance if required by law or the charter; otherwise they may be exercised by resolution."

Given the predilections of the county commission, it was to be expected that the commission would attempt to deny, at least. in part, the CEO's right to veto. A corporation counsel opinion rendered in October 1984 validated the executive's authority to veto any ordinance or resolution, citing the Charter County Act, Section lla(9).

To have effect, an executive veto must be delivered to the commission within the ten-day period prescribed by the charter, according to another county corporation counsel opinion dated March 29, 1984. Further, an ordinance actually takes effect at the end of the expiration of the veto period, or upon the eleventh day following transmittal to the CEO.

The charter does not provide the CEO with the option of ignoring legislative enactments: failure to veto within 10 days results in approval. However, in May 1984 the commission passed a resolu-

tion directing the CEO to develop and implement a plan to collect all outstanding debt at Wayne County General Hospital within 10 days and report his progress to the commission within 14 days, to which the CEO replied in a letter:

> "I will take no action in accordance with the attached opinion by Corporation Counsel .... However, we are presently reviewing a number of proposals for improving the collection of outstanding billings and receivables., At a later date, I expect to make specific recommendation...."

F. Purchasing

Traditionally, the power to approve the purchase of goods and services rests with the legislative body, which is the appropriating authority, and the power to execute purchases and contracts rests with the executive. The Wayne County Charter requires that the county commission set general purchasing policy and approve all contracts. It also establishes the division of purchasing in the executive department of management and budget, and charges the division with establishing a central purchasing system and managing and controlling all purchasing activities to insure cost effectiveness and efficiency.

In June of 1983 the county commission adopted an ordinance entitled "To provide for the Manner of Purchasing Goods and Services for the Charter County of Wayne." That ordinance required commission approval of major purchases, defined as general supplies and equipment of $5000 or more, and public works contracts of $25,000 for supplies, $50,000 for equipment, and $100,000 or more for construction contracts.

About a year later, the commission adopted another ordinance, entitled "An Ordinance to Delegate to the Chief Executive Officer Authority to Approve and Execute Routine Contracts and to Formulate and Issue Rules and Regulations for that Purpose." This ordinance, designed to streamline the purchasing process, applies to all legally enforceable agreements including those relating to personal services with county employees and independent contractors. A contract is defined to include a purchase order.

The 1984 ordinance makes no direct reference to the 1983 purchasing ordinance, but does declare "Ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed." Rule 36 of the commission's rules of procedure provides that "Any ordinance which repeals or amends an existing county ordinance shall set out in full the ordinance, sections, or subsections to be repealed or amended, and shall clearly indicate matter to be omitted and new matter to be added." The 1984 ordinance also declares that the provisions it contains supersede the provisions of a state statute which are inconsistent, although that issue had been decided differently by the courts.

Problems resulting from conflicting ordinances, the commission's cumbersome processing procedure, and the degree of review required would be resolved if the charter were interpreted to limit the county commission to establishing policy and exercising oversight, and to enable the executive branch purchasing division to implement a reasonable and well-defined policy.

G. County Commission Attempts to Reestablish Control

The charter county concept sketched in the state constitution and portrayed more clearly in the Charter County Act as amended, provided a means of restructuring county government to make it

more responsible and more efficient. Approval by Wayne County voters of a charter incorporating an elected chief executive officer demonstrated their willingness to embrace a revised system with checks and balances. But the history of the Wayne County Commission was that of direct involvement in the conduct of county operations. The continuation in elected office of many commissioners accustomed to operating in the old, relatively unrestricted manner and the difficulty of relinquishing power strongly suggested that the board of commissioners would attempt to retain authority. The impossibility of the charter document anticipating (and the inadvisability of attempting to anticipate) every potential area of disagreement or conflicting interpretation further insured that many issues would be resolved through legal interpretation, the most expedient of which was an official opinion of the county corporation counsel.

It is not surprising that the board of county commissioners attempted through the ordinance procedure to broaden their authority and to restrict that of the CEO. Opinions of the corporation counsel are telling indicators of these efforts to reestablish control.

While it is clear that the state act limits the power of the legislative county commission by allocating powers to the executive officer, and that the Wayne County Charter reserves more authority to the commissioners than is required by the state, a true system of checks and balances has been created. Provisions in the commission powers and duties section ensure legislative oversight: the commission's authority to override vetoes, and to approve or reject executive appointments, contracts, reorganization plans, and rules or regulations, as well as to require testimony and subpoena witnesses, effectively limits the power and authority of the chief executive officer.

H. The Bureaucracy: Another Restraint

The system of checks and balances defended so eloquently by Hamilton, Madison and Jay was predicated upon the division of authority between the states and the federal government, and among the functional branches of government. This would insure that each unit of government, in seeking to preserve its authority, would enforce restraint on the other units. Through this device, the freedom of the people would be insured. There is, however, another aspect of checks and balances that becomes operative in a representative government that protects its employees from the abuses of patronage, and that is the effect of the entrenched bureaucracy to provide continuity by resisting change advocated by elected leaders. This effect may be either good, as when the bureaucracy opposes politically motivated excesses, or bad, as when the established system resists reform.

In Wayne County, inefficiency was part and parcel of the entrenched system. Fiscal irresponsibility, nepotism and cronyism, and faulty records were part of the Wayne County system, and that system imposed its own limits on the ability of the CEO to effectuate change. These bureaucratic limitations increased the difficulty of resolving external county problems of declining tax base, high-need population, and required service levels.

Political ambitions also created substantial problems. Midway in his term, the first CEO switched from the democratic to the republican party and began campaigning for governor. This not only caused additional problems between the executive and legislative branches, but also redirected the focus of the CEO and his top administrators from running the county to running a political campaign.

Part VI. Financing Wayne County Government

A. Revenues and Resources

Property Tax Limitation. Article 9, Section 6 of the 1963 Michigan Constitution establishes a 15-mill limitation on unvoted ad valorem property taxes for division among counties, townships, and school districts. If electors approve separate tax limitations for the county, townships, and school districts, the permanent tax rate may not exceed 18 mills. Voted increases may bring the total millage up to 50 mills, but "The foregoing limitations shall not apply ... to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or any other authority, the tax limitations of which are provided by charter or by general law." The limitation's inapplicability to charter counties is stressed in the convention comment about Article 9, Section 6: "Cities and villages are excepted, as at present, from the 15-mill limit. The exception is also extended to charter townships, and charter counties organized under the terms of this new document. Such units would be subject only to limitations established in their charters or by law."

Article 7, Section 2 of the state constitution, as previously noted, states: "The (enabling) law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts."

In the Michigan Charter Counties Act, Section 14 (m) describes a mandatory provision of county charters.

> "The levy and collection of taxes, the fixing of an ad valorem property tax limitation not to exceed 1% of the state equalized value of the taxable property within the county, and that the levy of taxes from within this ad valorem property tax shall not exceed, unless otherwise approved by the electors, the tax rate in mills equal to the number of mills allocated to the county either by a county tax allocation board or by a separate tax limitation under Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217a of the Michigan Compiled Laws, in the year immediately preceding the year in which the county adopts a charter."

It seems clear from the constitution and from the enabling legislation that a county charter may provide for a 10-mill ad valorem property tax levy, assuming voter approval, which could be obtained by voter approval of a charter specifying the 10 mill rate. The possibility that this 10-mill charter levy could be outside the constitutional 15/18 mill limitation, allowing townships and school districts together to levy up to 15 mills without voter approval, led to Public Act 24 of 1980, which states in Section 4(3): "Each county which adopts a charter shall be allocated for charter county purposes, from the maximum tax rate which is fixed pursuant to section 6 of article 9 of the state constitution of 1963 without approval of the voters, a tax rate in mills equal to the number of mills allocated to the county either by a county tax allocation board or a separate tax limitation under this act in the year immediately preceding the year in which the county adopts a charter."

The Wayne County Charter was written in accordance with Act 24 of 1980; Sections 5.181(b) and 5.182 are relevant.

> "The County is authorized to levy an ad valorem property tax not to exceed 6.07 mills. As provided by law, the 6.07 mills is a transfer ok the millage allocated to the County from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. This section

does not authorize an increase in the rate of taxation as defined by Article IX, Section 31 of the Constitution."

"As provided by law, the net tax limitation tax rate to be allocated to other taxing units in the county is 8.93 mills. The net limitation tax rate is from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. The County Tax Allocation Board shall meet annually, as required by law, to allocate the net limitation tax rate. As provided by Article IX, Section 31 of the Constitution, the net limitation tax rate shall not be increased without a vote of the people."

A February 25, 1982 Wayne County Corporation Counsel opinion recommended that the then-functioning board of auditors should submit the 1982-83 county budget to the Wayne County Tax Allocation Board, which by law allocates among the various taxing units the "net limitation tax rate," because according to Section 20 of Public Act 293 of 1966, a "county is not deemed to have changed its status from that of a regular county to a home rule county until the charter has been adopted by the electorate and the officers provided for therein have been elected." The election of a CEO would not occur until November, 1982, and the charter would not become effective, according to its own provisions, until January 1, 1983.

It was the opinion of the corporation counsel, reiterated May 11, 1983 and March 21, 1984, that subsequent to charter implementation, the county's tax allocation was by action of the state legislature. Therefore Wayne County need not submit proposed budgets to the Wayne County Tax Allocation Board.

Wayne County electors approved a one-mill increase in the total tax millage rate for operations in August of 1978, effective 1980 through 1984. That increase, renewed in 1984, is consistent with Charter Section 5.181, Taxing Authority. "An increase in the authorization may be approved by the voters of the County for a period of not more than 20 years provided the increase does not produce a total authorization of more than 10 mills."

General fund receipts from the total 7.07 mill property tax (operating tax rate of 6.07 mills with an additional mill voted) have been reported in Wayne County annual financial statements as follows:

WAYNE COUNTY GENERAL FUND
PROPERTY TAX RECEIPTS

1981	$119,360,219
1982	127,470,956
1983	131,049,440
1984	127,675,846
1985	131,904,802
1986	126,338,306

Revenue Base. The relatively slow growth in Wayne County state equalized value (SEV) is cited in the "Wayne County Fiscal Integrity Plan II, Revised 8/15/86" as one of four significant factors contributing to the county's financial problems. (The other factors were prior absence of a CEO, overly generous employee compensation, and indigent health care.) The state equalized value in the City of Detroit has remained remarkably constant at about $5.2 billion for decades, and growth in out-county Wayne has been slower than that occurring in any of the other six counties

in the Southeast Michigan Council of Governments (SEMCOG) area. In fact, between 1970 and 1987, the 80% growth in total Wayne County SEV was very substantially below the state average growth of 201%, and also considerably below the 174% growth in the Detroit region consumer price index. According to documents prepared by the Wayne County Bureau of Taxation, the 1970 to 1987 percentage growth in county SEV in the SEMCOG area was as follows:

COMPARISON OF SEV GROWTH IN SEMCOG COUNTIES

County	1970 SEV	1986 SEV	% Increase
Livingston	$278,757,940	$1,451,375,502	420.66
Macomb	2,747,706,064	9,346,966,611	240.17
Monroe	474,805,366	2,655,931,422	459.37
Oakland	4,738,990,509	18,849,513,271	297.75
St. Clair	618,129,277	2,406,266,828	289.28
Washtenaw	1,210,113,881	3,935,803,616	225.24
Wayne	11,509,238,404	20,722,504,254	80.05
Total SEMCOG	$21,577,741,441	$59,368,262,504	175.14
Total State	$38,573,834,480	$115,926,773,725	200.53

Although Michigan counties tax property and not income, it is interesting to note what has happened to income in Wayne County. Not only did the value of property grow at a slower rate than occurred in other counties, per capita income in Wayne County also lagged. Per capita personal income in Wayne County in 1984 was $12,303, tenth highest in the state. But the percentage change in per capita personal income in Wayne County from 1974 to 1984 was only 98%, less than the 111% increase in the CPI in the same period. Only two Michigan counties, Gratiot and Ontonagon, had less growth in this index in the decade, according to the May-June, 1986 issue of "The Michigan Economy." By comparison, 1974 to 1984 growth in personal per capita income was 144.4% in Oakland, 167.5% in Washtenaw, 133.0% in Macomb, and 162.3% in Livingston County. An estimated $5 billion, or 22% of labor and proprietors' earnings earned in Wayne County are paid to residents of other counties, primarily Oakland and Macomb.

Revenues and Expenditures. A comparison of revenues and expenditures reported for the general and special revenue funds in the combined statements of revenues, expenditures and changes in fund balances for Wayne County for fiscal years 1982 through 1986 indicates changes in current operations.

WAYNE COUNTY
GENERAL AND SPECIAL FUNDS
(from Annual Financial Reports)

REVENUES

	1982	1983	1984	1985	1986
Taxes	$127,470,956	$131,049,440	$127,675,846	$131,904,802	$126,338,306
Grants & Program Revenues	75,340,143	75,310,228	132,946,571		
Federal Grants				28,448,395	23,036,331
Federal Revenue Sharing	11,693,458	11,146,089			
State Grants				153,411,392	193,470,391
other Shared Goverrmental Revenues & Taxes	23,668,205	29,779,750	42,837,507		
Services at Wayne County General	46,831,704	40,502,658			
Other Charges for Service	10,543,364	13,359,262	64,154,893	65,571,806	82,929,252
Local Unit Contributions					965,276
Licenses & Permits	319,850	638,445	267,135	298,413	256,316
Departmental & Court Fees	937,050	1,180,503	1,255,104		
Interest & Rents				6,559,100	3,809,439,
Investment Income	5,222,817	3,783,028	7,774,608		
Fines & Forfeits				403,668	1,410,261
Other	3,332,400		1,975,365	8,926,684	9,475,889
Total	$305,359,947	$306,749,403	$378,887,029	$396,489,536	$440,726,185

WAYNE COUNTY
GENERAL AND SPECIAL REVENUE FUNDS
(from Annual Financial Reports)

EXPENSES

	1982	1983	1984	1985	1986
Legislative				$ 2,734,595	$ 2,976,605
General Government	45,113,148	53,526,703	46,683,197	56,317,683	67,771,549
Judicial & Legal	37,878,791	45,968,239	29,468,091	35,078,362	35,378,180
Public Safety	31,742,188	43,649,181	35,752,932	42,236,270	48,924,114
Wayne County General Hospt.	60,548,927	58,247,816			
Other Health & Welfare	118,032,877	125,659,689	153,406,759	168,760,725	223,525,504
Cultural, Educational & Recreational	2,999,954	3,408,529	2,661,673	10,525,901	11,163,952
Public Works	2,019,514	2,441,906	7,249,571	5,200,311	4,412,384
Highways, Streets & Bridges			93,290,480	77,610,734	92,995,025
Other			1,958,762		
Expenditures Not Allocated to Activities (except Wayne County General Hospital)					
Retirement Contribution	17,832,833				
Employee & Retirement Benefits	25,436,169				
Retiree Hospitalization Benefits		4,976,378			
Capital Outlay			1,953,830	46,460,843	12,238,257
Debt Service-Interest					3,563,225
Total	$341,604,401	$337,878,441	$372,425,295	$444,925,424	$502,948,795

In 1985-86, the last year for which audited records are available, Wayne County received $126.3 million in general fund revenues from the property tax; this comprised 71% of all general fund revenues. Other general fund revenues included $0.2 million from federal grants, $33.1 million from state grants, $11.9 million from other charges for service, $0.1 million from licenses and permits, $2.6 million from interest and rents, and $4.0 million from other sources. General fund expenditures for current operations totaled $160.1 million and included $3.0 million for legislative, $35.4 million for judicial, $67.6 million for general government, $42.4 million for public safety, $0.6 million for public works, $3.2 million for health and welfare, $3.2 million for recreation and culture, $1.2 million for capital outlay, and $3.6 million for interest on debt. In addition, $22.8 million from federal grants, $160.3 million from state grants, and $71.0 million from other charges for service were received in special revenue funds; major expenditures from special revenue funds included $220.4 million for health and welfare programs and $93.0 million for highways, streets and bridges.

In 1985-86 Wayne County general fund expenditures and other uses of funds exceeded revenues and other sources of funds by $67.0 million. That deficit combined with the prior year deficit of $34.9 million resulted in a general fund deficit at November 30, 1986 of $102.0 million.

B. Financial Management in the Charter County of Wayne

Wayne County's financial problems were the reason state officials pressured the county to reorganize as a home rule charter county; unauditable books and payless paydays forced the issue.

Requirements Under State Law. Act 293 of 1966 as amended, Section 14(q), requires county charters to provide for the "Annual preparation, review, approval, and adherence to a balanced budget in a manner which assures coordination among the county offices, boards, commissions, and departments, except as provided in subsection (d)." That subsection preserves, in the largest county, the county road commission's "responsibility for the determination of the expenditure of all funds for road construction and road maintenance," an exception made moot by Public Act 33 of 1983, which sanctioned departments of public works under a charter county executive. The charter county enabling legislation also requires an annual audit of all funds by an independent CPA, and in the event of a deficit, preparation and submission to the governor and state legislature of a five-year plan for short-term financial recovery and long-term financial stability. That five-year plan must include a projection of revenues and expenditures, classification plan, pay plan, capital improvement budget, and equipment replacement schedule. A county charter may specify the power to levy and collect taxes, fees, rents, tolls, or excises permitted by law.

Charter Requirements. Charter Article V - Finance deals specifically with financial procedures aimed at producing a comprehensive, balanced budget, detailing the timing of budget preparation; the components of the budget message and budget documents; hearings schedules, the appropriation ordinance and allotment schedule; disbursement procedures; quarterly financial reports to the commission; budget amendment, transfer, and reduction procedures. Requirements for program review, comprehensive annual reports, and a budget stabilization fund are included in the charter, which repeats the Act 293 requirement that the CEO submit recovery plans following annual deficits, as well as state law limitations on taxes and debt.

The charter provided the CEO with specific tools for imposing financial controls in charter sections dealing with the appropriation ordinance (5.127), budget execution (5.141), allotments (5.142), disbursement procedures (5.143), budget reductions (5.146), and transfers and impoundments

(5.147). These tools have been used with mixed success. In spite of continuing deficits, emergency budget cuts have occurred only twice, once in 1984 to close the leased Wayne County General Hospital, and again in May of 1986, when the executive order also imposed a hiring freeze.

The relative roles of the CEO and the county commission in the budget making process were summarized in a November 12, 1985 opinion of the Wayne County Corporation Counsel.

> "The Commission has no legal authority to set limits on the number of employees nor to limit the salary level of individual employees, nor does it have the authority to regulate classification of the employees. The Commission does have the authority to set dollar limits on account categories (line items) in the budget and the executive branch is required to operate within those dollar limits.
>
> "The CEO is entitled to set the format of the budget by selecting the schedule of line items to be used (complying with the minimum schedule of line items set forth in Section 5.126 of the Charter). The Commission may not bind the CEO to a more detailed line item schedule since such would change the format of the proposed appropriation ordinance in violation of Section 5.134(a) of the Charter and would also likely improperly interfere with the conduct of the executive branch in violation of Section 3.118.
>
> "The Commission has the right within its Charter-expressed responsibilities to adopt programs not provided for by the CEO and has the right to amend the proposed appropriations ordinance without prior recommendation from the CEO. The Commission may add additional accounts to the budget so long as the additional accounts do not change the format of the budget."

Attempts to Achieve Financial Control. A long-term strategy for establishing financial order in Wayne County was drafted in May 1983. This Ten Point Fiscal Integrity Plan was viewed as a necessity as the fiscal 1982 budget deficit was revised to $117 million and financial projections based on business-as-usual predicted a 1987 deficit of $701 million. The original plan reflected major policy initiatives.

1. Bring payroll costs in line with market conditions.
2. Bring costs for the Residential County Hospitalization Program in line with average medical care costs.
3. Operate Wayne County General Hospital efficiently at no cost to the general fund.
4. Bring down the cost of the Criminal Justice System.
5. Balance the operating budget by December 1, 1983.
6. Fund only those capital expenditures which can be operated within. approved budgets and with known sources of revenue.
7. Implement up-to-date computer and word processing technology.
8. Seek voter approval for the renewal of the existing one mill of operating revenue.
9. Seek voter approval of one mill for ten years dedicated to the elimination of the debt incurred through November 30, 1983,as certified by outside auditors, and for infrastructure replacement.
10. Prepare a plan with the state to eliminate the debt the County owed the State.

All but the ninth item, which was not adopted by the CEO, were aggressively pursued by the county executive and his staff. Varying degrees of success were obtained. As noted previously, the hospital was leased, the county's debt to the state was forgiven or rescheduled, and a patient care management system was implemented to monitor the residential county hospitalization program. Double bunking at the county jail was a temporary solution to the problems inherent in operating the Wayne County Jail. The 1983-84 audit report showed current year, general fund revenues exceeding expenditures by $846,844, but an undesignated fund deficit of $39,604,084. The county's extra-voted one mill for operations was renewed in August 1984.

A revised Ten Point Fiscal Integrity Plan was developed in response to the fiscal 1985 general fund unreserved deficit of $45.3 million. This plan was considered to have the potential to generate $133 million over five years, and included four lawsuits - one for $50 million for alleged state violations of the Headlee amendment, another for $12 million for reimbursement for the care of felons, plus $8 million for respiratory disease care, and $800,000 from the City of Detroit. Realization of $28.6 million of deferred revenues totaling $32.4 million was part of the plan, as was sale of county owned land for $28.3 million. (An offering of 900 acres of land in Northville Township, expected to raise $22 million, was canceled when the sole bid of $15 million was rejected.)

Retirement System Modifications. The county's retirement system has been restructured. Actuarial assumptions were revised, and inducements were provided to encourage employees to transfer to plans with less generous benefits. Payments for accumulated sick and vacation leave are no longer considered part of average final compensation for calculating pension benefits. Employer contributions to the retirement systems as a percentage of payroll declined from 20.87% for general employees in 1982 to 9.73% in 1986, and from 27.39% for road commission personnel in 1982 to 21.41% for office of public services personnel in 1986. Unfunded actuarial accrued liabilities as of November 30, 1985 totaled $53.8 million out of total actuarial liabilities of $604.1 million. The introduction of a revised benefit program included buying out accumulated annual leave and sick leave, reducing new sick leave accumulation and introducing a long term disability plan, and providing inducements to switch to lower cost medical insurance.

C. The Bottom Line

Widely varying estimates of the county's financial position derive from the treatment of future debt and probable future lawsuit settlements (estimated at $50 million); failure of the county's accounting system to provide accurate, timely information; and the lag in transmitting Patient Care Management System bills from provider hospitals to the state and then to the county.

An analysis of annual financial reports reveals very little change in the county deficit, significant increases in future debt, and substantial improvements in pension funding.

The Deficit. In spite of the balanced budget emphasis in the charter and the efforts that have been made, the Wayne County deficit clearly has not been brought under control.

The following chart traces the audited results of those efforts.

WAYNE COUNTY
GENERAL FUND
(from Annual Financial Reports)
(in Millions)

Fiscal Year	Rev & Other Sources over/ (under) MW Other Uses	Cumulative Fund Balance	Fund Balance Reserves	Undesignated Unreserved Fund Balance
1982	$ (29.6)	$ (73.5)	$ 24.4	$ (97.9)
Revised		(93.4)		(117.8)
1983	82.8	(10.6)	25.1	(35.6)
Revised		(32.2)		(57.3)
1984	.8	(36.1)	3.5	(39.6)
1985	.1	(34.9)	10.4	(45.3)
1986	(67.0)	(102.0)	9.0	(110.9)

“Revenues and other sources over/(under) expenses and other uses” represents the amount by which general fund revenues and other financing sources exceed or fall short of the expenditures and other uses of those resources for the fiscal year. Adding the prior year surplus or deficit and equity transfers to that number generates the fund balance, which is generally considered the annual surplus or deficit. Subtracting fund balances reserved for supplies inventory, long-term advances, or other uses produces the undesignated, unreserved fund balance, which is the most telling measure of fiscal position.

The adjusted, unreserved, undesignated general fund deficit in 1982 was $117.8 million; the comparable number in 1986 was $110.9 million, a reduction of $6.9 million. After four years under a home rule charter and an elected county executive, Wayne County’s fiscal position appears essentially unchanged.

The most recent comprehensive annual financial report states in the notes to the combined financial statements: “County Management may seek the restructuring of amounts owed the State for program services through November 30, 1986; such current liability outstanding to the state at year-end is approximately $62.0 million, excluding an additional $63.9 million recorded in the Long-Term Obligations Account Group....” The State of Michigan withheld revenue sharing payments due Wayne County in May and August of 1987. Negotiations on a fiscal recovery package for the county continue between officials of the state and county.

Long Term Debt. In fiscal 1982, the year prior to the implementation of the Wayne County charter, the county had revised long term general fund debt of $48.5 million. In fiscal 1986 the comparable general fund debt, exclusive of debt payable from the Road Fund, was $136.6 million, an increase of $88.1 million. The combination of de6t and deficit was $81.2 million greater in 1986 than in 1982. The greatest changes in debt derived from the restructuring and forgiveness of

county debt to the state for indigent care, mental health, and the state ward charge back program (noninterest bearing debt of $63.9 million, with probable offsets of $12.9 million) and the December 29, 1984 sale-lease back of the Old County Building (November 30, 1986 long term obligation of $41.8 million.)

WAYNE COUNTY
GENERAL LONG TERM DEBT
(in millions)

	1986	**1982**
Noninterest bearing obligation to State of Michigan	$63.9	
Less interest imputed at 10%	19.7	
	$44.1	
4.7% to 5.0% Detroit-Wayne Joint Building Authority Revenue Bonds, due serially to 1996	7.7	$ 8.3
Claims, assessments, & medical malpractice	18.3	14.6
Vacation & sick pay	21.2	24.5
Obligations under capital leases	45.3	1.1
Total	$136.6	$48.5

The $136.6 million in debt reported in the 1986 Annual Financial Report is unfunded, and like the deficit, represents reductions in future service levels. Portions of the debt are not due for sane time: the ten-year lease payments on the Old County Building are not scheduled to begin until after building restoration is completed in 1987, and repayment of the restructured debt to the State of Michigan extends to 1993. It is clear that the county has increased its reliance on debt in an attempt to reduce the pressure on the deficit.

Unfunded Accrued Pension Liabilities. The 1982 Audited Financial Statements for Wayne County reported actuarial accrued pension liabilities of $724 million. Unfunded vested accrued liabilities for general county, hospital, and road commission employees in the employees' retirement system were reported as $106 million. The November 30, 1986 financial audit quoted November 30, 1985 actuarial accrued liabilities of $604.1 million, of which $53.8 million was unfunded. This obligation, which in 1986 was half of the amount unfunded in 1982, is not part of the county debt or deficit.

Part VII. Issues to Be Resolved

The future of Wayne County depends on its leadership's ability to resolve longstanding problems, including revitalizing the tax base and encouraging economic development. Reorganization has made effective leadership possible, but debt and operational problems will continue to challenge the county.

Continuing major financial and operating problems include the funding of indigent hospitalization, mental health and state ward programs, the operation of the Wayne County Jail, and, according to management letters from the county's independent auditor, poor accounting and financial reporting systems and inadequate staff performance.

A. Indigent Care

Although the indigent care debt crisis had been addressed as described in Part IV B, the solution increased future debt ($63.9 million at November 30, 1986) while the county continued to incur additional massive debts, now estimated at $62 million, for program services to the state. The problems of determining debt and providing county funding of health and welfare programs which are required by the state may be resolved through negotiations among the governmental units and health care providers involved. County efforts will be directed at convincing state officials that county resources are not sufficient to allow continuing county funding of indigent care. In noting that other Michigan counties may opt not to accept responsibility for financing indigent care, county health officials voice the opinion that because the state manages and controls the program, the state should also fund indigent care.

B. Wayne County Jail

The current "old" Wayne County Jail was completed in 1929. The "old side" was designed to hold 800 prisoners, and an annex completed in 1963 was designed for 251 inmates. The facility held an average of 1600 to 1700 prisoners in 1970. In 1971, a class action lawsuit filed on behalf of prisoners resulted in a court order to reduce the Jail population to the jail's capacity of 813, rehabilitate the facility, and improve the standards of care.

Wayne County voters defeated a proposed millage to construct a new Jail in 1972: not until 1977 through 1981 was the county tax rate increased by 1/2 of one mill to fund construction and operation of a new county Jail. That maximum security facility, opened in 1984, was intended to accommodate 576 inmates. Unfortunately, its design required a very high ratio of guards to prisoners.

By the end of 1986, crowding at the Wayne County Jail had become so severe that people convicted of drunken driving, prostitution, and other misdemeanors were told to "phone in" to the court to learn when their sentences would begin. Not only were convicted misdemeanor and felony offenders being turned away, hundreds of nonviolent felony offenders were released due to overcrowding. By January 1987 the two Jail facilities held over 1600 prisoners, almost exclusively felons. The next month, the Wayne County Sheriff wrote an article for the Detroit Free Press recounting the decline in Detroit and Wayne County Jail space from 2900 in 1971 to 1600 in 1987, resulting from the closing of DeHoCo and court ordered Jail renovations.

The CEO appointed an oversight committee to review administration of the jail, hired a jail expert to advise on jail redesign, and searched for additional sites that could be converted quickly to

detention facilities. The sheriff pursued through the courts his request to reduce the court-ordered standards of inmate dare or to force the county to grant additional resources necessary to provide court-ordered levels of prisoner care. (In **Wayne County Jail Inmates v. Wayne County Sheriff**, 391 Mich 359t (1974), the state supreme court determined that the courts could properly direct a county board of commissioners to meet their responsibility to provide "suitable and sufficient" jails and to keep them in good repair.)

As of this writing, the chief judge of the circuit court has appointed a committee comprised of the county executive, chairman of the county commission, sheriff, prosecutor, chief judge of the 36th district court, and judge of the 32a district court to formulate recommendations on maximizing existing jail space, allocating existing jail space, and providing adequate and suitable jail space in the future. The county has hired two consulting firms, one to study existing facilities and the other to study potential sites for new detention facilities.

Looming large among the problems that remain to be resolved are the capacity and cost to house Wayne County prisoners. Operation of the Wayne County jail is the responsibility of the sheriff, an independently elected executive branch official, and care of prisoners is prescribed by court orders issued as a result of class action suits initiated in 1971.

Audited financial statements for Wayne County do not contain expenditure data specifically for the jail, but do reflect expenditures for "public safety."

WAYNE COUNTY
EXPENDITURES FOR PUBLIC SAFETY
(from Annual Financial Reports)

Year	Expenditures
1982	$39,556,261
1983	43,649,181
1984	35,752,932
1985	42,236,270
1986	48,924,114

C. Management Information Systems and Internal Controls

As described in Part IV-A, the county does not have a comprehensive, computerized management information system. The absence of such a system requires that critical management decisions be made without essential data. Basic data such as standard employee totals are not available. The effectiveness of the systems that are in place is compromised by the inability of staff to utilize them properly. For example, the county's external auditing firm had to make over 200 adjusting journal entries before they could determine operating results for 1985. Management letters from the external auditor have cited significant, recurring problems in recording transactions properly, in locating documents, and in training and management of accounting personnel.

Part VIII. Summary and Conclusion

In Wayne County, acute managerial, organizational, and financial problems culminated in a fiscal crisis in 1979, when the county was unable to meet its payroll obligations. State pressure was brought to bear to restructure Wayne County organization to establish accountability and to install a system of checks and balances. Two proposed county charters, varying only in the status and powers of the chief executive officer, were developed according to state enabling legislation, approved by the governor, and submitted to the voters, who chose the stronger, elected form of CEO. The Wayne County Commission raised numerous challenges to the authority of the CEO; most were resolved in favor of the executive. The first charter county executive addressed some of the most critical issues facing the county by challenging county employee labor unions, leasing the deficit-ridden county hospital, and restructuring the massive debt owed to the state for indigent care, mental health, and other social programs. As a result, the county deficit declined from $117 million in 1981-82 to $35.6 million in 1982-83. Since that time, the county has relied on other non-recurring financial devices to reduce the growth o the deficit, which nonetheless reached $110.9 million in 1985-86. Very substantial managerial and operational problems remain.

Wayne County's second elected executive assumed office on January 1. 1987. He inherited the authority to reorganize those executive functions under his control, a body of legal opinions and decisions better defining his authority, relief from the burden of Wayne County General Hospital, a stagnant tax base, and over $247.5 million in combined general fund deficit and debt. Many other problems remain: personnel and systems that are ineffective but well entrenched; a persistent habit of spending more than revenues can support; probable further reductions in federal social service grants combined with increased health care costs for indigents; and an inefficient and overburdened county jail.

Has Home Rule Helped? Wayne County is the only county in Michigan that has reorganized under a home rule charter. The county's problems are legion, but the real issue for students of government is whether the home rule structure is best for the administration of a modern urban county. The questions that must be asked are whether reorganization as a home rule county has been of benefit to Wayne County, and if so whether this or some other approach to county governance should be expanded to other counties in Michigan. The answer to the former question seems to be "yes," there is better direction and accountability, but serious problems remain. Whether extension of home rule to other counties is advisable depends to a large extent on how well those boards of county commissioners are functioning, and what financial and managerial problems exist in those local governments.

Michigan state law allows other forms of county organization, and these should be considered by county residents who may be pondering the benefits of reorganization. County organizational structure can be modified to obtain the benefits of executive coordination in a system of limited checks and balances without the adoption of a county charter. At this time, no other Michigan county is facing the severe financial problems and the resulting political pressures that made organizational restructuring a necessity for Wayne County, but residents of several counties are concerned about increasing the efficiency of their county operations. The experiences of Wayne County may be instructive for them.