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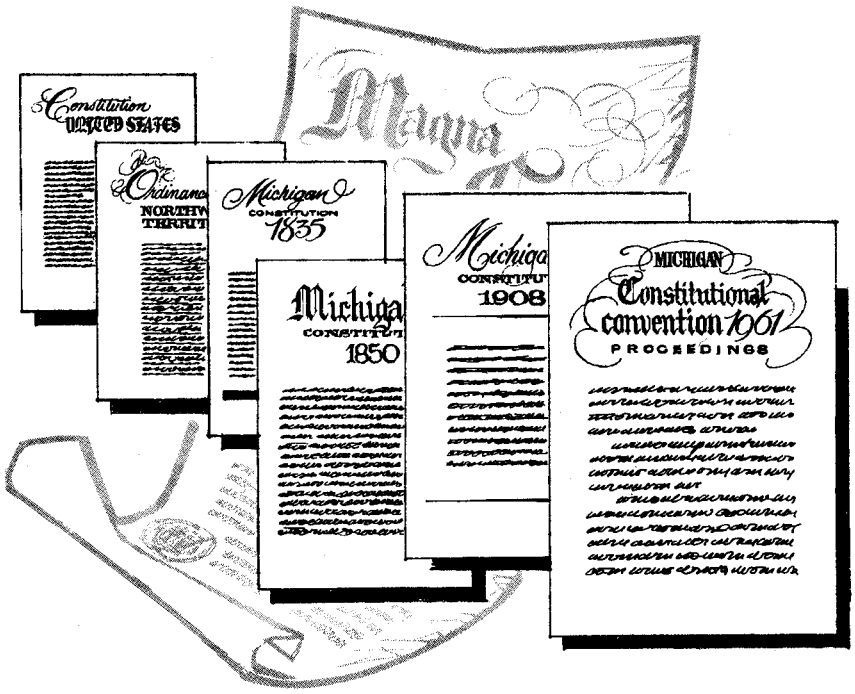
NO. 5

CONSTITUTIONAL ASPECTS OF STATE-LOCAL RELATIONSHIPS - II

METROPOLITAN GOVERNMENT

by

William N. Cassello, Jr.



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MEMORANDUM NUMBER 205

NOVEMBER,1961

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INTRODUCTION

This Research Paper on Metropolitan Government is one of a series of four studies concerned with Constitutional Aspects of State-Local Relationships. The Research Council asked Mr. William Cassella, from his vantage point as Assistant Director of the National Municipal League, to prepare this description or appraisal of the results achieved under the constitutional provisions in other states relating to metropolitan areas. This presentation of the metropolitan provisions of the constitutions of other states is not intended to provide a "model" for inclusion in the Michigan constitution. Rather, it was felt that a review of the experience in other states would be of interest to the delegates to the convention and to the people of Michigan.

The Population of the Metropolitan Areas in Michigan

The 1960 United States Census of Population shows Michigan as having ten "standard metropolitan statistical areas." In 1960 the total population of these ten areas was 5,720,692, or 73 per cent of the total population of the state. These ten areas increased 26 per cent in population in the past decade, while the remaining areas of the state increased only 16 per cent during the same period.

The ten metropolitan statistical areas and their 1960 and 1950 populations are shown in Table 1.

It is significant to note that while the population of these ten metropolitan areas increased 26 per cent during the past decade, the total population of the core or central cities actually decreased by three per cent from 1950. The population of the central city decreased in three of the ten areas. In only two of the ten areas (Ann Arbor and Kalamazoo) did the population of the central city increase more than the population in the area outside the central city.

Thus the population growth in these ten metropolitan areas was largely in the areas outside the central cities. During the past decade the population of the areas outside the central cities increased 65 per cent. In 1950 the central cities had 58 per cent of the total population of the metropolitan areas, but by 1960 the central cities had dropped to 45 per cent of the total.

Table 2 shows the distribution of population by type of residence within the metropolitan areas. Within the metropolitan areas 87 per cent of the population resides in urban territory, and 13 per cent in rural territory.

Table I.-POPULATION OF STANDARD METROPOLITAN STATISTICAL AREAS: 1960 AND 1950

[Data relate to areas as defined for l960. Minus sign (-)denotes decrease]

Standard metropolitan statistical area, central city, and other component areas	1960	1950	Increase	
			Number	Percent
ANN ARBOR, MICH. (Washtenaw County)				
Total	172,440	134,606	37,834	28.1
Ann Arbor city	67,340	48,251	19,089	39.6
Outside central city	105,100	86,355	18,745	21.7
BAY CITY, MICH. (Bay County)				
Total	107,042	88,461	18,581	21.0
Bay city	53,604	52,523	1,081	2.1
Outside central city	53,438	35,938	17,500	48.7
DETROIT, MICH. (Wayne County)				
Total	3,162,360	3,016,197	746,163	24.7
Detroit city	1,670,144	1,849,568	-179,424	-9.7
Outside central city	2,092,216	1,166,629	925,587	79.3
Macomb County	405,804	184,961	220,843	119.4
Oakland County	690,259	396,001	294,258	74.3
Wayne County	2,666,297	2,435,235	231,062	9.5
FLINT, MICH. (Genesee County)				
Total	374,313	270,963	103,350	38.1
Flint city	196,940	163,143	33,797	20.7
Outside central city	177,373	107,820	69,553	64.5
GRAND RAPIDS, MICH. (Kent County)				
Total	363,187	288,292	74,895	26.0
Grand Rapids city	177,313	176,515	798	0.5
Outside central city	185,874	111,777	74,097	66.3
JACXSON MICH. (Jackson County)				
Total	131,994	107,925	24,069	22.3
Jackson city	50,720	51,088	-368	-0.7
Outside central city	81,274	56,837	24,437	43.0
KALAMAZOO, MICH. (Kalamazoo County)				
Total	169,712	126,707	43,005	33.9
Kalamazoo city	82,089	57,704	24,395	42.3
Outside central city	87,623	69,003	18,620	27.0
LANSING, MICH. (Ingham County)				
Total	298,949	244,159	54,790	22.4
Lansing city	107,807	92,129	15,678	17.0
Outside central city	191,142	152,030	39,112	25.7
Clinton County	37,969	31,195	6,774	21.7
Eaton County	49,684	40,023	9,661	24.1
Ingham County	211,296	172,941	38,355	22.2
MUSKEGON-MUSKEGON HEIGHTS, MICH. (Muskegon County)				
Total	149,943	121,545	28,398	23.4
In central city	66,037	67,257	-1,220	-1.8
Muskegon	46,485	48,429	-1,944	-4.0
Muskegon Heights	19,552	18,828	724	3.8
Outside central city	83,906	54,288	29,618	54.6
SAGINAW, MICH. (Saginaw County)				
Total	190,752	153,515	37,237	24.3
Saginaw city	98,265	92,918	5,347	5.8
Outside central city	92,487	60,597	31,890	52.6

Table 2.-POPULATION OF THE STATE AND OF STANDARD METROPOLITAN STATISTICAL AREAS, BY TYPE Of RESIDENCE: 1960

Metropolitan-non-metropolitan residence	Total	Urban			Rural		
		Total	Central city or cities	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory
The State	7,823,194	5,739,132	2,570,259	3,168,873	2,084,062	240,753	1,843,309
In standard metropolitan statistical areas	5,720,692	4,973,713	2,570,259	2,403,454	746,979	65,688	681,291
Ann Arbor	172,440	121,484	67,340	54,144	50,956	5,604	45,352
Bay City	107,042	72,763	53,604	19,159	34,279	2,826	31,453
Detroit	3,762,360	3,563,210	1,670,144	1,893,066	199,150	19,815	179,333
Flint	374,313	291,450	196,940	94,510	82,863	6,393	76,470
Grand Rapids	363,187	295,986	177,313	118,673	67,201	3,842	63,359
Jackson	131,994	76,023	50,720	25,303	55,971	1,037	54,934
Kalamazoo	169,712	119,179	82,089	37,090	50,533	6,404	44,129
Lansing	298,949	201,168	107,807	93,361	97,781	11,351	88,430
Muskegon-Muskegon Heights	149,943	100,465	66,037	34,428	49,478	3,403	46,075
Saginaw	190,752	131,985	98,265	33,720	58,767	5,013	53,754
Not in standard metropolitan statistical areas	2,102,502	765,419	. . .	765,419	1,337,083	175,065	1,162,018

Source: U.S. Bureau of the Census, U.S. Census Of Population: 1960, "Michigan; Number of Inhabitants."

The trend toward concentration of the population of the state in the metropolitan areas seems likely to continue in the future. Conservative estimates of Michigan's population growth in the next decade indicate that by 1970 the state's population will increase from the present 7.8 million to about 9.3 million, a 19 per cent increase. The same projections indicate that the population of the present ten metropolitan areas will continue to increase at a faster rate than that of the rest of the state--a 22 per cent increase in the population living in the metropolitan areas, while the remaining areas of the state are expected to increase only 14 per cent. And, it is probable that by 1970 additional areas of the state will meet the census bureau's definition of standard metropolitan statistical areas.

Units of Government in the Metropolitan Areas in Michigan

The Council of State Governments has provided the following succinct statement of the metropolitan problem:

> Briefly stated, the problem of government in metropolitan areas arises from the division of power and responsibility among a host of separate local governmental units. None of them currently is able to provide a sufficient number of services and facilities on an area-wide basis, and so none is able to meet effectively the needs and problems which are of an area-wide nature.[1]

Michigan's standard metropolitan statistical areas contain a number of separate local governmental units.

Table 3 shows the number of units of local government in each of the ten metropolitan areas as reported in the 1957 Census of Governments. There were a total of 1,082 units of local government serving these ten metropolitan areas in 1957. These included 14 counties, 144 cities and villages, 225 townships, 33 special districts and 666 school districts. The number of local units ranged from a low of 58 in the Kalamazoo metropolitan area to a high of 251 in the Detroit metropolitan area. Two of the ten metropolitan areas extend beyond the boundaries of a single county--the Detroit metropolitan area is defined to include all of Wayne, Oakland and Macomb counties and the Lansing metropolitan area includes all of Clinton, Eaton and Ingham counties.

The figures in the table show clearly that the "metropolitan problem," at least insofar as multiplicity of local units of government is concerned, varies widely among the ten areas.

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[1] The Council of State Governments, 1956, The States and the Metropolitan Problem.

TABLE 3

NUMBER OF UNITS OF LOCAL GOVERNMENT IN TEN STANDARD

METROPOLITAN AREAS IN MICHIGAN--1957

Area	Total No. Units	Counties	Municipalities	Townships	Special Districts	School Districts
Ann Arbor (Washtenaw)	72	1	8	20	1	42
Bay City (Bay)	91	1	4	14	4	68
Detroit (Macomb, Oakland & Wayne)	251	3	72	54	14	108
Flint (Genesee)	67	1	11	18	2	35
Grand Rapids (Kent)	173	1	10	24	3	135
Jackson (Jackson)	71	1	7	19	2	42
Kalamazoo (Kalamazoo)	58	1	8	16	1	32
Lansing (Clinton, Eaton & Ingham)	92	3	8	16	1	64
Muskegon & Muskegon Heights (Muskegon)	86	1	9	17	2	57
Saginaw (Saginaw)	121	1	7	27	3	83
Total	1,082	14	144	225	33	666

Source: U.S. Bureau of the Census, 1957 Census of Governments--Local Government in Standard Metropolitan Areas and Government in Michigan.

CONSTITUTIONAL ASPECTS OF STATE-LOCAL RELATIONSHIPS- II

METROPOLITAN GOVERNMENT

The provision of governmental services to growing urban populations is the domestic problem which is testing the vitality of the American federal system. Because of the important powers which local, state and national levels of government share in meeting the needs of urban areas, the intergovernmental relationships involved are tremendously complex and seldom understood.[1]

STATE CONSTITUTIONS--BARRIERS TO METROPOLITAN PROGRESS?

Perhaps the most confusing role of all is that of the state.[2] Faced on one hand with the reality of the national government responding to the needs of urban areas and on the other hand with the jealously held prerogatives of local units, the states must assert their full legal powers if their future role in metropolitan matters is to be of strategic importance. Therefore, a fundamental question which arises whenever the constitution of an urban state is under review is the extent to which the constitution enables the state and its subdivisions to react in an imaginative fashion as urban problems appear. If the constitution restricts the powers of the state legislature in meeting urban problems, or places limitations on the capacity of local governments to adjust themselves to meet new conditions, then the possibility of the state and local governments responding effectively is greatly reduced.

Unfortunately, a review of the provisions of state constitutions inserted specifically to provide devices for meeting metropolitan problems reveals no easy to follow formula. More often than not attempts to use prescribed constitutional machinery to effect metropolitan reorganization have failed. The few successful metropolitan experiments point to the need for a great variety of solutions, each largely the product of specific "time and circumstances." Each specific solution must take cognizance of the demands of the particular time, place and circumstances. The need is for flexibility. Constitutional provisions should encourage flexibility on the part of legislatures and localities in meeting modern urban demands. Changing patterns of settlement and changing technology have brought new dimensions to the problems of transportation (road, rail, water and air), water supply, air and water pollution, recreation, waste disposal, protective services, social and educational programs, and an equitable scheme to finance all public services.

Constitutional restrictions on the power of the state legislature to provide for the redistribution of governmental functions or aspects of governmental functions among the governments of local units and the state agencies can seriously hamper efforts to solve metropolitan and urban problems. By the same token, constitutional limitations can prevent needed adjustment in jurisdictional boundaries. It is obvious that such redistribution of functions, or readjustment of boundaries, should take account of fiscal considerations but here also constitu-

tional limitations can restrict legislative discretion and prevent adequate solutions to metropolitan problems.[3]

In an "ideal" constitution, there would be no restrictions on the power of the legislature to act on these metropolitan matters. Thus, the legislature could provide the procedures for making needed adjustments and indeed, when appropriate, would have the power to assign to state agencies a positive role in making them. On boundary questions this could be done either through some form of judicial determination or administrative adjudication. On transfer of functions, say from municipalities to counties, a local referendum procedure which truly reflects the will of the total urban area could be developed. In larger metropolitan complexes, involving many counties, procedure for establishing multi-county jurisdictions could be prescribed by law. When a metropolitan area spreads across state and even national boundaries, there should be no constitutional restrictions on the development of intergovernmental cooperative arrangements for meeting area-wide problems.

In all local units, when the problem is one of internal governmental structure, reorganization could be effected by law and/or local charter adoption without constitutional limitations on the number, type, manner of selection and terms of local officials or requirements of extraordinary or multiple majorities for charter change. Provisions for intergovernmental contractual relationships or joint exercise of functions should be developed without constitutional restraint.

However, "real world" constitutions often reflect distrust of the legislature and therefore have not assigned unlimited discretion to legislatures regarding matters of local government reorganization and devices for meeting problems of metropolitan areas.

The result has been a host of limitations strait-jacketing the easy adjustment of boundary lines and the reassignment of functional responsibilities. Beyond the purely restrictive type of constitutional provisions, there has been a tendency on the part of those interested in particular metropolitan "reforms" to write into the constitution procedures for effecting specific types of governmental reorganization. Unfortunately, the result of both the negative limitations and the narrow positive authorizations has been to perpetuate, and indeed aggravate, the complex pattern of governmental relationships in metropolitan areas.

PROTECT THE STATUS QUO?

Uniformity of Local Government

Generally, constitutional restrictions have been designed to protect existing local governmental units. Often they have prescribed uniformity of local governmental structure entirely out-of-touch with the needs of diverse communities in states encompassing both rural and urban areas. These limitations perpetuate institutional forms designed for a simple, essentially agricultural society which knew neither the benefits nor the problems of modern transportation, communication, and other creations of modern technology. For example, the structure of

county government in most states must conform to specific constitutional requirements establishing a uniform pattern, perhaps appropriate for rural counties but entirely inadequate for urban counties, with large budgets and extensive programs which need the coordination of a responsible county executive.

Constitutional Home Rule

In an effort to introduce a degree of local initiative and control, the American tradition of "local self-government" was formalized into the legal concept of "constitutional home rule." On one hand "home rule" has permitted localities to adjust the structure of their local governments to meet special local needs, but on the other hand the same concept has introduced certain institutional rigidities. Municipalities, particularly "home rule" municipalities, acquired the right to exist in perpetuity, no matter how irrational their relationships to other municipalities, counties, special jurisdictions and even the state. This status perhaps could be justified when the municipality was an urban island in a rural sea, but scores of contiguous municipal units within a metropolitan complex present a very different picture.

When each municipality, regardless of size or viability, has “equal" legal status with every other, the question of boundary adjustments is unbelievably complex. Generally the result is very little annexation and virtually no municipal consolidation. A "home rule" orientation has prevented, by specific constitutional provision or judicial interpretation, a degree of flexibility which permits jurisdictional change to meet changing conditions.[4]

The entire doctrine of "constitutional home rule" for both municipalities and counties must be reappraised in light of metropolitan conditions.

County Home Rule

The county in most states is thoroughly strait-jacketed by constitutional provisions. County officers are characteristically named in constitutions, county boundaries have constitutional protections, relatively few states permit a free choice of optional forms of county government, and fewer permit the adoption of locally drawn "home rule" charters. The county continues to be considered primarily in its traditional role as an instrumentality of the state even though in urban areas it increasingly assumes the responsibility for providing municipal-type services. Structural changes in county government are important as significant demonstrations of efforts to re-equip counties to do a different job in a different governmental environment. The more critical question is the extent to which counties have the legal power to provide urban services and to raise revenues to finance them. The relationship between counties and municipalities when both are performing municipal functions is a most difficult aspect of the "home rule" question. This is a particularly thorny problem when the county seeks a special status "superior" to that of the municipalities within its borders. Because most metropolitan areas are contained in single counties, the county may be the logical unit for the handling of area-wide functions. Yet, when the transfer of functions from municipali-

ties to the county is involved, constitutions contain obstacles, both legal and fiscal. The record of such transfers presents an uneven and perplexing picture.

When health and welfare administration or the operation of a hospital becomes a particularly heavy burden upon a municipality, there is a willingness and often an eagerness to broaden the geographical basis of financial support. This cannot always be done easily because of constitutional tax rate limits placed upon the county. Also rigidity in county governmental organization may inhibit such functional transfers.

Special Jurisdictions

When service needs in metropolitan areas become particularly pressing and when the municipalities and counties are unable or unwilling to meet the needs, a variety of governmental devices of limited geographical or functional jurisdiction have been established. Often constitutional debt limits have led to the creation of authorities financed by revenue bonds. The special district device for a metropolitan area or for a suburban development is a common phenomena and has found its way into state constitutions. When the advocates of a particular functional program have succeeded in getting constitutional status for it, they may have invited a similar venture by another functional interest and the complexities and rigidities are magnified.[5]

PROVIDE A SIMPLE SOLUTION?

The normal reaction to the complexity of overlapping Jurisdictions has been to seek the simplicity of a single jurisdiction for the metropolitan area. The search has not been impressively successful and where it has, simplicity has not carried with it the twin virtue of flexibility. Often the “simple" solution, particularly when written into the constitution, has led to long-run rigidities.

Nineteenth Century City-County Consolidations

The traditional role of the county as an administrative subdivision of the state and a unit concerned principally with rural problems led understandably to an early conflict between county units and municipal units in some metropolitan areas. The county was viewed as a "rural encumbrance” upon an urbanizing area. The simple solution seemed to be the elimination of the overlapping city and county units.

Boston and New Orleans. The 19th century consolidations of city and county governments in Boston and the city and parish governments in New Orleans are not particularly instructive for 20th century constitution makers.

Philadelphia. For that matter, city and county consolidation in Philadelphia, where city and county boundaries have been identical since 1854, is more of a testament to the survival power of ancient

county institutions than a record of reorganization designed to meet the realities of modern urban conditions. Despite constitutional amendments intended to "complete" the Philadelphia consolidation passed as recently as 1951, questions regarding the status of some "county" officials still remains in doubt more than a century after the basic consolidation was accomplished in 1854. (Pa. Article XIV, Section 8)[6]

New York City. The most far-reaching consolidation of local governments ever undertaken in the United States was the establishment of the consolidated city of New York in 1898. Unique in that more than one county was involved in the area of the greater city and that a "borough" plan of organization could make provision for the continuation of certain discretionary powers at the borough or “county" level, the consolidation, nonetheless, had to be effected within the provisions of the existing constitution which specified the continuation of a number of elected county officials. Not until the late 30's was New York city empowered to abolish these county offices and reassign the functions of the offices abolished.[7] The 1898 consolidation which had been preceded by a partial consolidation of the city of Brooklyn and the county of Kings, was unquestionably an instance in which the state legislature, unencumbered by numerous constitutional restraints, exercised its full range of powers over local governments in an effort to provide a pattern of government for a growing urban area which was in keeping with the demands of the times. To be sure there were partisan political advantages seen in effecting these changes but in the main they were approved by local referenda. Both imaginative local leadership and an aggressive legislative action resulted in a structure of local government which, not withstanding its weaknesses and imperfections, has contributed to the continuing vitality of the nation's largest metropolis. (N.Y. Article IX, Sections 2, 5, 7)

The logic of consolidation was apparent in the New York area because of the two adjacent cities of New York and Brooklyn which shared a common port and whose interest and future was inextricably joined. The city-county issue was over-shadowed by the imperatives of a dynamic urban setting. The problem of the interstate metropolis remained. New Jersey cities also shared the port. A partial answer came later with the establishment of the port of New York authority.

Although the New York metropolitan area extends far beyond the boundaries of New York city, no one today seriously considers expanding the city's limits. But fears in Westchester county lest this might occur led to the provision in the New York constitution limiting annexation by cities unless the consent of those annexed is secured (N.Y. Article IX, Section 14). The relationship of New York to some seventeen suburban counties in and out of the state remains an unresolved question.

City-County Separations

Elsewhere, the problem of city-county relationships took on a very different complexion. A growing city within a larger rural-oriented county, quite understandably, was impatient with county institutions and saw great advantages in a simple form of organization in which the growing city was separated from the rural agricultural county. Such a

move was considered an imaginative approach to government in a metropolitan area although subsequent development proved the contrary.

Baltimore (1851), San Francisco (1856), St. Louis (1876) and Denver (1902) separated from the counties of which they had been a part. The residual counties would provide for rural needs, the "separated" cities for urban needs.[8]

Both the Baltimore and the St. Louis separations were effected on the basis of provisions contained in newly adopted state constitutions. The Denver separation was done through a self-executing constitutional amendment (Colorado, Article XX, Section 1). In San Francisco, the separation was effected by legislative act, later confirmed by a provision of California's constitution of 1879. It is significant that the St. Louis and San Francisco separations redrew the boundary lines of the city so as to include large undeveloped areas. At the time it was considered that the boundaries as redrawn would permit all future urban growth to occur within the city limits. Thus, provision for still further expansion was not even considered. The boundaries of San Francisco and St. Louis remain unchanged to the present day despite the fact that urban growth has long since spread far out into other jurisdictions.

In the case of the Baltimore separation, a constitutional amendment required supporting state legislation. This was forthcoming. The Baltimore boundaries were not enlarged at the time of the separation, but later substantial annexations were accomplished by acts of the legislature. Denver has expanded its limits, utilizing a regular annexation procedure.

In none of these cases has city-county separation proved the answer to the problems of government in an expanding urban area. In each case, the special status for the separated city has been given a constitutional basis. In no case has the constitutional basis anticipated a flexible method whereby regular boundary adjustments may be made which correspond to the requirements of a modern urban area. Unlike the city-county separation procedure in Virginia where city boundaries may be adjusted by a judicial system of annexation, constitutional mandated separations have tended to complicate rather than alleviate metropolitan problems.

The St. Louis Experience: Separation and After

City-county separation in St. Louis and its aftermath are particularly instructive, even if largely in a negative sense. It tells other metropolitan areas the constitutional approaches not to take if nothing else. Certainly, in no other area have so many different attempts been made with such a singular lack of success. City-county separation there was tied closely to the whole problem of constitutional "home rule." Indeed, strictly municipal issues were hopelessly confused with what became metropolitan issues. The 1876 charter of the new and enlarged city of St. Louis was the first constitutional "home rule" charter in the United States. It, along with the scheme of separation, required and received the approval of the local voters.[9]

Contrary to projections, the 1876 boundaries of the city of St. Louis included far too small an area. By the turn of the century, the urban growth had outstretched the municipal boundary lines and suburban development had extended into the residual area of St. Louis county. It was realized that some provision must be made for furnishing urban services to the areas beyond the city limits. The demand for urban services was met by numerous new incorporated suburban municipalities. Without a county government encompassing both the central city and the suburban areas, there was absolutely no local agency which even approached metropolitan proportions. It was realized that the divorce of the city of St. Louis from St. Louis county, which was thought so wise in 1876, was far from a satisfactory resolution of the urban governmental picture. The fact that the separation had its basis in the state constitution made it impossible for any action either by the local units themselves or by the state legislature to undo the damage and effect any form of reconciliation.

A Scheme of Reunion Sought. The matter was thoroughly debated in the Missouri constitutional convention of 1922-23. More than the usual suburban-central city antagonism was apparent because of the strong feeling that the county had been short-changed in 1876 by the separation. The city could not expand and thus sought constitutional relief. Actually, the county's attitude, although antagonistic to the city, was not antagonistic to the notion that the large taxable resources of the city of St. Louis could be added to the smaller resources of residual county. The constitutional convention presented an amendment with authority for a fairly flexible approach to the St. Louis city-county problem but unfortunately included with it provisions generally applicable throughout the state. Rural counties were frightened and as a result, although the voters of both the city and county of St. Louis approved the amendment, it was rejected state-wide.

The amendment again followed the "home rule" approach to the resolution of the city-county relationship. A board of freeholders, half from the city and half from the county, was to be constituted as the body charged with the job of preparing "a scheme for the return of the territory within the city of St. Louis to said county, the consolidation in whole or in part of the governments of the city and county, and the adjustment of all other issues that may arise." The exact design of the "scheme" was left to the discretion of the board of freeholders and subject to approval of city and county voters.

The defeat of this amendment led to the introduction by the initiative process of another amendment also designed to rectify the unsatisfactory state of affairs. The new amendment was much more specific and spelled out the alternative approaches which might be undertaken. This so-called consolidation amendment offered three routes:

(1) to consolidate the territories and governments of the city and county into one political subdivision under the municipal government of the city of St. Louis; or,

(2) to extend the territorial boundaries of the county so as to embrace the territory within the city and to reorganize and consolidate the county governments of the city and county, and adjust their relations as thus united, and thereafter the city may extend its limits in the manner provided by law for other cities; or,

(3) to enlarge the present or future limits of the city by annexing thereto part of the territory of the county, and to confer upon the city exclusive jurisdiction of the territory so annexed to the city. (Mo. Article VI, Section 30 (a))

This amendment also provided for the development of the "scheme" by a board of freeholders, nine from each of the two jurisdictions. The amendment was approved in November 1926. It is obvious that this type of a constitutional provision contained a built-in pattern for conflict rather than a vehicle for achieving compromise and reconciliation. Presenting alternative approaches in the constitution and limiting the "scheme" to such alternatives foreshadowed the divisive nature of the effort to achieve a metropolitan solution based upon such a constitutional provision.

When a board of freeholders was constituted under the terms of this amendment in 1925, it was characterized by a continuous deadlock between the city and county members. The city was interested in absorbing the balance of the county within its municipal boundaries (i.e., it followed alternative (1)). The county, on the other hand, insisted that the only solution would be for the city to return to the county and enjoy the same status as any other county municipality (alternative (2)). For almost a year the deadlock persisted until finally one county member agreed to sign the "city plan" in order to bring the matter before the voters. As could easily have been predicted, when the "scheme" was presented to the electorate in 1928, it was approved by the voters of the city but overwhelmingly defeated by the county voters. The entire effort was negative in its impact. The campaign exaggerated the antagonisms between the city and the county.

A Federated Greater City. It became apparent that the constitutional provision was inadequate but, rather than seeking a flexible constitutional provision within which a board of freeholders could develop an entirely new plan for reordering city-county relationships, various civic leaders went to the other extreme. Interest immediately was focused on another definitive device, namely, the federated greater city. An enormous amount of conscientious civic effort went into formulating the dimensions of this proposal. It clearly could not be undertaken within the framework of the existing constitutional provisions and another amendment was originated by initiative petition. The text of the amendment was an elaborate formulation, more like the charter of a federated city than an enabling amendment. Its some 3,000 words contained such involved provisions that it was extremely difficult to sell the proposition to the electorate. Again, partly because opponents could read into the monumental detail implications that were not there, and partly because of old city-county antagonisms, another vindictive campaign developed. Not only was the amendment turned down in the 1930 state-wide vote, but it also was rejected in the county and passed by only a narrow margin in the city. The alignments here were not the same as in the 1926 consolidation referendum. The major office holders in both the city and the county opposed this amendment because they saw in it a threat to their status.[10]

Metropolitan Districts. Not until the Missouri constitutional convention of 1943-44 were further proposals made for modifying the constitutional provision regarding St. Louis city-county relationships. In the meantime, the situation had become more complicated with the es-

tablishment of more suburban municipalities and the continuing increase in the population of the county as compared with the relative population decline in the city itself. Although some proposals before the convention would have "loosened up" the constitutional enabling provisions, the net result was to add simply another alternative to the existing three, namely to provide that a board of freeholders could present a plan to establish a metropolitan district "for the functional administration of services common to the area included therein." (Mo. Article VI, Section 30 (a)) The impetus behind this provision was the strong realization that something had to be done and done soon about functional problems, particularly sanitary sewers.

This provision was part of the new Missouri constitution adopted in 1945. It has had a number of unfortunate results. It gave constitutional sanction to the functional fragmentation of the area. Submitted under this provision, a metropolitan sewer district was established by popular vote in 1954. A metropolitan transit district was narrowly rejected in 1955.

When a multi-purpose district proposal was presented to the voters in 1959, the drive for metropolitan reorganization had been blunted by a prior solution to the sewer problem. Further, the 1959 proposal had to be developed within the limited set of alternatives presented by the 1945 constitutional ' provision. Those fixed alternatives do not encourage the utilization of local initiative and invention to meet the delicate and difficult problem of city-county relations. When the board of freeholders which submitted the 1959 plan first met, it spent months deliberating which of the four constitutional alternatives should be followed. When freeholders had once committed themselves to a particular position, it was very difficult for them to retreat and return to a constitutional alternative which they previously had rejected. Obviously, the constitution gives no room for compromise and actually leaves some very serious legal questions with respect to the operation of a plan which might be adopted under any one of the four alternatives. Enthusiasm for the multi-district proposal was limited and its rejection by both city and county voters was not surprising.[11]

This rehearsal of the St. Louis experience with A variety of constitutional provisions, both actual and proposed, indicates the difficulties which arise when the constitutional provision places detailed limitations on what a charter-drafting group may do. A charter-drafting board should be given the greatest possible latitude to develop the kinds of accommodations necessary if plans are to be accepted. It is really contrary to any "home rule" philosophy to tie the hands of those "at home" upon whom you are depending to develop a "tailor-made" plan to meet local problems. An equally important lesson to be learned from the St. Louis experience is that the simplicity of city-county separation as a metropolitan solution can be most deceptive. Rather than simplify the St. Louis problem, separation caused an endless train of new problems and new complexities. It is probably fortunate that the Michigan provision for city-county separation has never been used. (Mich. Article VIII, Section 2)

MULTIPLE MAJORITIES—UNNECESSARY CONSTITUTIONAL HURDLE?

One of the hurdles which the various plans submitted in St. Louis and St. Louis county could not surmount was the requirement of a dual majority, i.e., a favorable vote in both the city and the county. This type of constitutional requirement has been a serious handicap to the adoption of proposals in a number of metropolitan areas.

Pittsburgh. After a long and careful study of the Pittsburgh metropolitan area in the mid 20's, an amendment enabling the local voters to vote on a plan for metropolitan federation was passed in the 1927 and 1928 sessions of the Pennsylvania legislature and was approved in a state-wide vote. Whether by accident or design, a "joker" was written into the amendment. It was intended that the requirement be for a simple majority vote of two-thirds of the municipalities of Allegheny county for approval of the metropolitan federation plan. The "joker" read that a "two-thirds majority vote in a majority of the municipalities" be required. In the subsequent referendum held in 1929 in Allegheny County, the proposed charter was overwhelmingly approved but it secured a two-thirds majority in only 48 municipalities whereas 62 were needed. Without that provision, the plan would have been approved. This "joker" was removed from the constitution by action of the 1931 and 1933 legislatures and finally by the voters of the state in 1933.[12]

Although attempts have been made, this elaborate procedure for metropolitan reorganization has not been utilized since. (Pa. Article XV, Section 4) Lacking any other constitutional authority for some type of metropolitan or county reorganization, in 1955 a new amendment with a less cumbersome procedure was proposed. It was designed to permit Allegheny county to adopt a county charter and transfer certain functions from the municipal to the county level. The prospects of successfully obtaining passage of a constitutional amendment by two successive legislatures and subsequently approval by popular referendum seemed dim and the proposal died.[13]

Cleveland. The multiple-majority requirement proved an obstacle to governmental reorganization in the Cleveland area. In this case, as in Pittsburgh, the county covered an area substantially equivalent to the metropolitan region. Therefore, there was interest in reorganizing the county and assigning to it additional governmental powers. A constitutional amendment enabling this type of reorganization failed in Ohio in 1929 and 1931. It was finally passed in 1933. Although the amendment required only a simple county-wide majority for structural reorganization, it contained a difficult multiple-majority provision:

> No charter or amendment vesting any municipal powers in the county shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in each of a majority of the combined total of municipalities and townships in the county (not including within any township any part of its area lying within a municipality). (Ohio Article X, Section 3)

Recognizing the difficulty of obtaining these four concurrent majorities, in 1935 a charter commission presented a charter drawn with the

intention of reorganizing the county but not tampering with the distribution of functions. It was approved in a countywide vote. But it was ruled unconstitutional. According to the Ohio supreme court, the charter conferred the "procedural" if not the "substantive" functions of municipalities upon the county. The procedural function in question was a county civil service system.[14]

A subsequent charter which did involve the transfer of functions was presented in 1950. It failed to receive any of the four required majorities. In 1957 the constitutional requirement was eased by eliminating the fourth majority for Ohio counties with a population in excess of 500,000. Nevertheless, in 1959 still another county charter which involved the assignment of a number of exclusive functions to the county government was presented. A majority of the voters of the county rejected the proposal. The new complication which had been inserted in the 1957 constitutional amendment was the concept of exclusive and concurrent county and municipal powers. This involved the necessity of the charter commission defining certain powers which would fall into each of these categories. Clearly, one of the factors causing the defeat of the 1959 charter was disagreement as to which "municipal powers" should be exercised exclusively by the county government.[15]

It appears that wherever concurrent-majority requirements exist, there is a strong presumption against the acceptance of any plan which is submitted to the electorate. This had been shown in a number of recent referenda on city-county consolidation proposals.

Tennessee. An amendment added to the Tennessee constitution in 1953 provides for the

> consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidation shall not become effective until submitted to the qualified voters residing within the municipal corporation in the county outside thereof and approved by a majority of those voting within the municipal corporation. (Article XI, Section 9)

Two proposals for metropolitan charters calling for city and county consolidation have been rejected. The 1958 Nashville-Davidson county charter was approved in Nashville but rejected in the area outside. Similarly, a 1959 charter calling for the merger of Knoxville and Knox county was approved by the voters in the city but disapproved by those outside. It should be noted that in neither case was the aggregate county-wide vote favorable on the proposition. However, the requirement for a concurrent majority in the suburban areas, which are inclined to be unfavorable to merger, tends to reduce the incentive for a large vote in the city. A second metropolitan charter will go to the voters of Nashville and Davidson county in 1962.[16]

Multiple Majorities in Other State Constitutions. The city-county consolidation provision in the Texas constitution is extremely complex with a requirement for a two-thirds majority vote of the jurisdiction to be merged with the county. This and other features of the provision have made it unworkable. (Tex. Article IX, Section 3 (6))[17]

The Washington state provision also calls for a complicated dual majority and has gone unused. (Wash. Article XI, Section 16)

If indeed it is felt desirable that a dual-majority requirement for city-county reorganization be included, this type of requirement can be inserted by legislation rather than made a constitutional prerequisite. Such provisions have been developed to protect the less populous suburban areas against being overwhelmed by the vote of the central city. It seems particularly appropriate that this question be left to the legislature when it is realized that the composition of most state legislatures tends to be less sympathetic to the larger cities than to the rural and semi-rural suburban towns. The legislature should be able to provide all of the protection that is needed.

Even in the imaginative proposal for a new local government article submitted by the temporary commission on the revision and simplification of the New York state constitution in 1959, it is suggested that the provision for multiple majorities for county charters be continued. It would seem sufficient to allow this type of protection to be inserted by the legislature but nonetheless the proposed New York local government article would provide that:

> no alternative form (of county government) shall become operative unless approved in a referendum by a majority of the votes cast in the cities considered as one unit and by a majority of the votes cast outside the cities. If such form of government provides for transfer of any function to or from any villages, the transfer shall not become effective unless approved by a majority of the votes cast in the villages affected considered as one unit.[18]

Such protection for existing municipalities is difficult to explain except as an indication of the enormous political power of lobbyists for cities, towns and villages who are fearful that a majority vote, countywide, in a New York county would transfer functions from the municipalities to the county level. But to make such a multiple-majority requirement applicable when only a structural reorganization of the county government is anticipated seems unreasonably restrictive.

It should be noted, however, that Erie county was able to meet the multiple majority requirement and affect a substantial reorganization of its county government. However, the Erie county charter involved no transfer of functions. A number of functions already had been transferred by mutual agreement.

The other New York counties (Monroe, Nassau, Suffolk and Westchester) which operate with county charters did not utilize the alternative-form route to achieve their reorganization. Rather, their charters were approved as local laws by the legislature at the request of the local governing body and were subsequently submitted to local referenda.[19]

In New Mexico, the constitution permits the legislature to make whatever provisions it chooses for the adoption of city-county consolidation provisions. (N.M. Article X, Section 4) The legislature called for concurrent majorities in a central city and the remainder of the county involved. The voters of both Albuquerque and Bernalillo county turned down a merger proposal in 1959.

In Georgia there is constitutional authorization for developing procedures for the consolidation of counties and municipalities. (Ga. Article XI, Section 17) The legislature provided for a multiple-majority requirement by statute. Consolidation proposals failed to receive the necessary majorities in Albany and Dougherty county in 1954 and in Macon and Bibb county in 1960.

The Montana constitution gives the legislature power to prescribe procedures for city-county consolidation and contains no multiple majority requirements. No mergers have been undertaken but the pressures of metropolitan population have hardly touched that state. (Mont. Article XVI, Section 7)

The constitutional provisions thus far discussed have been singularly unsuccessful in equipping states and localities to meet urban problems in the 20th century. The only ones which have led to the intended results have been the city-county separation provisions, most of which were developed in the 19th century and are now generally regarded in the light of years of experience as short-sighted mistakes.

Even in New York state where there has been considerably more attention given to the importance of the county as a unit of local government, the progress to this end has been made largely in spite of constitutional provisions rather than encouraged by them. In some counties, undoubtedly, New York's multiple-majority requirement has been an inhibiting factor.

Where, in recent years, have constitutional provisions brought about desirable adjustments? Actually, the examples are relatively few. Some of the adjustments made in connection with the Atlanta Plan of Improvement which became effective in 1952 necessitated the passage of several constitutional amendments in order to assure that the plan could become operative.[20] These were more in the nature of clearing up details rather than providing the basic device for reorganization. Two striking examples are those of the limited consolidation of the city of Baton Rouge and East Baton Rouge parish (county) and the establishment of metropolitan county government in Dade county, Florida. In both cases, an amendment to the constitution was necessary to prepare the way for the basic reorganization.

CONSTITUTIONAL ENCOURAGEMENT?

Consolidation in Baton Rouge

The Baton Rouge plan became effective on January 1, 1949. As an experiment in metropolitan government, it experienced the usual growing pains and problems but has now become a firmly established local government pattern and has been able, with increasing success, to provide for the needs of a growing urban area.[21]

In 1945, the city of Baton Rouge had a population of approximately 35,000, with more than twice that number residing in the area of East Baton Rouge parish outside the city. The archaic governmental structure and limited legal powers of the parish police jury (governing body) were completely inadequate to furnish municipal services to the growing suburbs. The host of unmet needs became strikingly apparent when an attempt was made to develop a city-parish master plan.

A Special Constitutional Amendment. Realizing that some form of fundamental reorganization on a regional basis was necessary and that no authority for such reorganization existed in the constitution, a citizen-led effort sought and obtained the passage of a special constitutional amendment, approved by the electorate of the state in 1946. (La. Article XIV, Section 3 (a))

This amendment created a city-parish charter commission consisting of nine members and directed their appointment, three by the police jury of the parish, two by the city council, and one each by the parish school board, the Baton Rouge chamber of commerce, the director of the department of public works of the state of Louisiana and the president of Louisiana State University. The amendment gave broad authority to the charter commission.

It was clearly stated by the amendment that although the plan to be prepared by the charter commission must be "subject to the constitution and laws of the state with respect to powers and functions of local government," it distinguished between the broad powers of local government and matters of structure, organization and distribution and redistribution of powers among the several units of loca1 government within the parish. The constitutional language which indicates the breadth of authority assigned to the charter commission is instructive. It stated that the plan of government to be developed may provide among other things:

> (a) For consolidation, or reorganization, of all or part of the local governmental units, agencies and subdivisions in the parish, for the elimination or transfer of powers and functions of such units, agencies and subdivisions, for the creation of one or more new local governmental units, agencies and subdivisions, for the reorganization of one or more local governmental units, agencies or subdivisions, for the extension of municipal limits, and for all matters necessary or appropriate to the effectuation of such provisions, including, without limitation, the assumption by one local governmental unit, agency and subdivision of indebtedness of another or

other and transfer of official personnel records, funds and other property and assets; and

(b) For revenue for the support of the one or more local governmental units, agencies or subdivisions proposed by the plan, including, without limitation, allocation of parish revenues to other units, agencies or subdivisions.

The features of the proposed plan of government that were mandatory under the constitutional amendment were clearly specified. "The plan of government shall provide for the establishment of an industrial area or areas. It shall also provide a method for establishing additional industrial areas by the local government body under the jurisdiction of which such additional industrial area or areas may then or thereafter be situated. No industrial area or areas shall be a part of any urban area or urban areas." It further gave a clear definition of what was meant by "an industrial area." This took cognizance of the fact that some unincorporated sections of the parish were unserved by municipal services and when used for industrial purposes had developed extensive patterns of privately operated services in lieu of services normally provided by local government. It went on to say that the plan itself must provide for and define rural and urban areas. The completed plan was to be filed within twelve months of the effective date of the amendment and submitted at a special election not less than 30 nor more than 60 days from the date of filing the proposed plan.

Partial Consolidation Plus Annexation. The proposal represented an ingenious approach to local government. It actually combined the device of city-parish (county) consolidation with that of annexation. The city limits of Baton Rouge were extended to include the major residential areas of the parish. The administrative structure of the two jurisdictions was merged under an elected executive to be known as "mayor-president." A unique legislative arrangement was provided with a seven-member city council, which, with the addition of two other members elected from outside the city, would also serve as the parish council.

As required by the constitutional amendment, urban, rural and industrial areas were specified in the plan. The urban area was coterminous with the city of Baton Rouge. The industrial and rural areas would be treated differently as far as taxes were concerned because of different levels of local governmental services provided.

Approval of the plan would be on the basis of a county-wide vote. The referendum was held in August of 1947 and the proposal carried parish-wide by a very narrow margin. Only because of a wide majority within the old, incorporated areas of Baton Rouge was the plan adopted. There was violent opposition from those areas which were annexed to the city and a series of legal attacks were made on the charter. However, it did become effective on schedule, January 1, 1949. Further legal complications followed, but in time the opposition subsided after the reorganized government was able to inaugurate significant public works.

One of the problems which the new government faced had its basis in the constitution. The homestead exemption from taxes on the first two thousand dollars of assessed valuation for state, parish and special

district taxes but not of city taxes meant that a large number of residential property owners included in the areas annexed to the city of Baton Rouge were paying property taxes for the first time. Their dissatisfaction was extremely vocal. This demonstrates the fact that unsound fiscal provisions of constitutions frequently hamper constructive efforts to develop an equitable basis for the financial support of public improvements which, in almost every case, is one of the objectives of a metropolitan reorganization.

Metropolitan Dade County

Not quite ten years after the approval of the Baton Rouge plan, the voters of Dade county, Florida, adopted a metropolitan "home rule" county charter in accordance with the provision of a special amendment to the Florida constitution.[22] Agitation for a fundamental reorganization of local government in Dade county had been active since the end of World War II. A number of consolidation proposals were given serious consideration. In 1953, exercising its powers of local legislation, the Florida legislature passed a measure abolishing the city of Miami and turning over its functions to Dade county pending approval of the plan in a countywide referendum. There was strong support for this measure as a simplification of government in the area. It lost by a narrow margin and spurred the city of Miami to initiate an inquiry into other possible roads to metropolitan reorganization.

A Special Constitutional Amendment. A systematic study of governmental problems of the area revealed that it would require a constitutional amendment to equip Dade county with a modern government adequate for the needs of the metropolitan area. The amendment was passed by the Florida legislature in 1955 and approved state-wide in the 1956 general election. (Fla. Article VIII, Section 11) The far-reaching implications of this amendment are of special interest.

The 1956 amendment faced squarely the problems involved in providing a county government equipped with the powers and structure necessary to meet the needs of a growing metropolitan area. It recognized that this involved a number of fundamental questions including the relative status of laws passed by the state legislature and the charter and ordinances adopted locally; the relationship between the county government and the 26 municipalities within the county; the future status of county officers provided for in the constitution; and, the reorganization of the governmental structure of Dade county. Implementation of the amendment called for the creation by the legislature of a charter board with the responsibility for drafting the initial charter which in turn would be submitted to a county-wide vote. No further approval by the legislature was required for either the charter or subsequent amendments.

The key issue in any reordering of government in a metropolitan area is the redistribution of governmental power. This involves the limitation of state legislative power as far as the operations of the "home rule" metropolitan county are concerned as well as the relative powers of the county and the municipalities.

The problem of the status of the charter and county ordinances as compared with state legislation was resolved in the amendment. General

laws with application in Dade county and elsewhere would supercede the charter and local ordinances. On the other hand, the "charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local special or general law applicable only to Dade county." The "local legislative" powers so generally used in southern states thus would be exercised by the county's governing body rather than by the state legislature. However, the amendment also clearly stated that the power of jurisdiction of state administrative agencies would be the same in Dade county as elsewhere in the state.

Further, the amendment required that the charter shall provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.

This provision gave Dade county municipalities the possibility of exercising greater freedom as far as the structure of their municipal governments was concerned than had previously been possible.

A similar provision authorized the charter to provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

By both provisions, county powers were being increased at the expense of the legislature which in practice meant the Dade county delegation to Tallahassee.

The amendment is explicit regarding the "superior" status of Dade county as an instrumentality of metropolitan government. The charter:

> May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes and do everything necessary to carry on a central metropolitan government in Dade County.
>
> May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Dade County.
>
> May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental

unit in Dade County may be transferred to the Board of County Commissioners of Dade County.

May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

It is easy to understand the reasons why most Dade county municipalities vigorously opposed the amendment and subsequently the charter prepared in accordance with its provisions. Although without the amendment municipalities were completely "at the mercy" of the legislature (i.e., the Dade delegation), the prospect of municipal units being distinctly subordinate to the "metropolitan county" was viewed with considerable alarm.

Prior to the submission of the amendment to the state-wide electorate, litigation to keep the proposition off the ballot was undertaken at the initiative of the Dade county league of municipalities. It was alleged that the amendment did not conform to the requirement that "no amendment shall consist of more than one revised article of the constitution."(Fla. Article XVIII, Section 1) The state supreme court ruled that the amendment revised only one section, not even an article, and the fact that it did affect other articles was necessary to the accomplishment of the purpose of the amendment and in accord with the constitutions amendment provision. (R.A. Gray, Secretary of State of Florida and the Metropolitan Charter Board vs. Harold S. Golden and Dade County League of Municipalities, September, 1956). When the vote came in November, 1956, there was a wide margin in favor of the amendment; 244,817 to 120,343 state-wide and 86,612 to 34,337 in Dade county.

A Metropolitan County Charter. After the amendment was approved municipal opposition continued but again lost out when the charter was adopted in 1957. The small margin in favor of the charter (44,404 to 42,619) encouraged the opponents to seek an amendment to the charter which would weaken the county's powers over the municipalities. This attack also was unsuccessful (49,894 for the anti-county "autonomy" amendment to 74,420). But the opponents continued to hammer away at the metropolitan charter. Its most serious threat reached a climax when another "anti-metro" amendment was before the voters on October 17, 1961. The amendment was narrowly defeated by a vote of 96,380 for and 104,573 against.

In actual operation the county government has been quite cautious in exercising its broad powers. A court test came in connection with the passage of a county-wide traffic code and whether it could supersede a municipal code (Miami Shores Village vs. Cowart, 108 So. 2nd 468 Fla., 1958). The supreme court affirmed the county's power but specified that in order to be valid such regulations must be applicable to the entire county.

The charter contemplated the continued existence of the municipal units and stated "no municipality in the county shall be abolished without approval of a majority of its electors voting in an election called for that purpose." (Dade county charter, Section 5.01) Actually, the charter provision regarding municipal boundary changes gave

relatively little power to the county in comparison to that permitted by the language of the amendment.

The same was true as far as the transfer of functions from municipalities to the county was concerned. No blanket transfers were contemplated by the charter and when they were effected, they would normally require consent of either the municipal electorate or its governing body. However, the charter contains a somewhat ambiguous provision for county-wide standards for the performance of functions. If not met, the county may take over the particular service.(Dade county charter, Section 1.01 (18))

The fact that county powers can be exercised in both incorporated and unincorporated areas of the county, although somewhat limited as to the latter, continues to disturb some municipal partisans.

The constitutional amendment is amply clear on the matter of authorizing a change in the governmental structure of Dade county. The board of county commissioners is designated as the governing body of the county under any charter but the size of the commission, method of election, term of office, etc., shall be fixed in the charter.

The amendment, while excepting the schools and the courts, states the charter:

> May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature ... provide for the consolidation and transfer of the functions of such offices ... and provide further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

This power was written into the charter giving the board of county commissioners the power by ordinance to abolish the constitutional offices of sheriff and constables and offices created by the legislature. (Dade county charter, Section 1.01 (19))

The studies of the Miami area clearly pointed to the necessity of establishing a modern administrative structure for the county, subject to the direction of a chief executive officer. Although not stated in the amendment, the intent was that an integrated executive be created. This would be enhanced by the provision to "abolish, or transfer and consolidate the functions of existing county officials." The charter provides for an appointive county manager. An elected chief executive could have been provided. (Dade county charter, Article III)

Although no direct attack has been started to replace the 1956 constitutional amendment, the charter drawn to implement it has been subjected to continuous harassment. The proposed charter amendments defeated in October 17, 1961 sought to replace the thirteen member commission (which acts as a legislative body) with a five-man commission similar to the county boards elsewhere in Florida, to abolish the county manager and to reduce drastically the jurisdiction of the county government in incorporated areas.

It is significant that the opposition to the reorganized government of Dade county which has become particularly vocal in recent months comes from almost the same quarter as that which was vocal in the first few years of operation under the Baton Rouge plan. The tax-free sanctuary of the homestead exemption has been invaded. Under reassessment in Dade county, the $5,000 exemptions may not be sufficient to keep thousands of home owners off the tax rolls if proposed reassessments go into effect. In Dade county, as in Baton Rouge, combining greater fiscal equity with governmental reorganization involves serious risks. Friends of metropolitan reform do not have an easy job selling it to those who get tax bills for the first time. A direct attack upon unsound tax policies perpetuated by constitutional provisions might ease the process of metropolitan reorganization.

PROGRESS BY VOLUNTARY COOPERATION?

In both Baton Rouge and Dade county significant progress has been possible because constitutional authorization was given to a drastic modification in the basic structure of local government and a fundamental adjustment in power relationships. The constitutional amendments in each case avoided the obstacle of a dual or multiple majority and gave authority to the county-wide (or parish-wide) electorate to approve a charter providing for a new local governmental set-up in the metropolitan area. Significantly, both were specific in effect, not state-wide.

The hue and cry which was raised by those opposing these adjustments suggests that these metropolitan solutions have been imposed by either constitutional or legislative fiat. Of course this was not the case. Rather local initiative was responsible for obtaining passage of the enabling amendments and for securing support for the charter.

What does make these plans distinctive is that they recognized the importance of giving priority to area-wide interests and do not make metropolitan reorganization dependent upon the voluntary cooperation of all or virtually all jurisdictions or localities within the metropolitan area.

The potential of voluntary cooperation as a route to metropolitan progress would be much more encouraging if the interest of urban areas as a whole could be given unified expression. Unfortunately, when a county endeavors to equip itself as a metropolitan agency, the most vocal opposition comes from the municipal subdivisions which see in stronger county government a threat to their own prerogatives.

This view has strong justification where counties have long exploited the tax resources of the incorporated municipal areas to pay for services provided in the unincorporated Areas of the county. Yet, notwithstanding the unfavorable climate for voluntary cooperative programs, substantial progress has been made when both municipalities and counties have been willing to experiment with new cooperative devices.

Reorganized Counties as Wholesalers of Services

California counties have demonstrated the potentiality of developing modernized governmental structure and flexible patterns of county-municipal relationships.[23]

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relationships between local units; that is, among municipalities and counties in a single state with these arrangements extending when necessary across state lines.

Metropolitan Districts and-Metropolitan Councils

Constitutional authority for the creation of special metropolitan districts may actually prove restrictive, particularly if the provision specifies the functions which may be handled by metropolitan districts and the types of jurisdictions which may participate. (Mich. Article VIII, Section 31) Nothing in the constitution should preclude the use of elected local officials in the ex-officio capacity as members of the governing body of the metropolitan district. This will not necessarily make the metropolitan agency responsible to local interests. However, if this type of governing body for a metropolitan agency does seem desirable as it did in the case of the multi-county air pollution control district and metropolitan rapid transit district in the San Francisco Bay area or the municipality of metropolitan Seattle, nothing in the constitution should prevent it.

The dynamic character of metropolitan areas is such that all devices of metropolitan reorganization, no matter how far-sighted they seem at the moment, may be entirely inadequate for the problems a decade or two hence. Therefore, whatever approach is taken, flexibility is the most essential ingredient.

This may mean that the recent interest in cooperative arrangements among local governments has greater promise than often assumed. The informal conferences of local officials, particularly the elected political leaders, may provide the vehicle for developing more definitive solutions in metropolitan problems.[24] When such an "assembly" of officials, now active in the Detroit, New York, Washington, San Francisco and Philadelphia areas, is given the necessary staff to explore the problems at hand, it can become a most influential agency. Its influence may be felt both in achieving more salutary inter-local relationships and in controlling the impact of federal and state programs in an area. With the spread of urban populations into the once rural sections between the traditional metropolitan areas, the probability of greater involvement by the states and the federal government is certainly increased. Some area-wide consensus has to be developed if the metropolitan areas themselves are to exercise desirable controls over the impact of central government within the area. Regional planning agencies, when related to assemblies of local officials, can assist in providing the information needed to reach a regional consensus.

CONSTITUTIONAL PRESCRIPTION: FLEXIBILITY NOT REMEDIES

In all these moves toward more orderly metropolitan organization and more effective local governmental services in metropolitan areas no one approach appears as the ultimate answer. The state constitution cannot prescribe specific remedies, but it should do nothing to frustrate efforts both in the state legislature and in the localities to develop new remedies. It should permit maximum flexibility in the adjustment of local government organization and intergovernmental relationships. Unfortunately, more often than not, the contrary situation exists.

The Canadian experience offers an instructive contrast. In Toronto Winnipeg and Montreal metropolitan experiments have been undertaken.[25] The provincial legislatures have not been impeded in the development of metropolitan solutions. The strikingly successful government of metropolitan Toronto was established by legislative act after both private and public agencies had studied the governmental needs of a growing metropolitan area. Toronto's two-level metropolitan federation, where the metropolitan level was created to handle area-wide matters was not popular with suburban municipalities. It undoubtedly would have been rejected had there been a "constitutional" requirement for concurrent majorities in the city of Toronto and the area outside. The legislature imposed a solution which has resulted in strengthened operations of local government. It recognized that operations of the metropolitan and municipal levels must be meshed in a workable whole. The interest of the area prevailed over parochial concerns of individual municipalities.

The experience in many states shows that constitutional prescriptions for metropolitan reorganization have seldom proved workable. When they have been successful, they have been inserted in the state constitution as part of a concerted local effort to achieve metropolitan reorganization with sufficient steam behind the effort to implement the constitutional authorization, e.g., Baton Rouge and Dade county. Constitutional limitations on the reorganization of local government have succeeded in protecting the status quo and preventing the exercise of local and legislative initiative in meeting the problems of metropolitan areas. A modern constitution should encourage initiative on the part of both the state legislature and local leaders. It should permit a flexible approach to local governmental organization and powers with recognition of the different needs of different types of urban areas--the metropolitan area within a single county—the area which lies in more than one county--the larger multi-county region--the declining and the growing urban area. One answer will not satisfy all of these, not to mention the different needs of the rural sections of the state.[26]

The needs of urban areas will somehow be met. They must if our urban civilization is to progress. If the states and localities can unshackle themselves from artificial restraints, they can do the job. If they do not, cries will be heard in Washington and the states and the localities will become only minor partners in the federal system, not by design, but by default.

Footnotes

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[26] The sixth edition of the National Municipal League's Model State Constitution (Preliminary Discussion Draft dated August 4, 1961) provides for maximum flexibility in the development of a pattern of local government and intergovernmental relations. The text of the model provision is as follows:

> Section 7.01. Organization of Local Government. The legislature shall provide by general law for the government of counties, cities and other civil divisions, and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions
>
> (1) for such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;
>
> (2) for optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) for the adoption or amendment of charters by any county or city for its own government, by a majority vote of the qualified voters of the city or county voting thereon, including methods and procedures for the selection of charter commissions, and for framing, publishing, disseminating and adopting such charters or charter amendments, and for meeting the expenses connected therewith.

Section 7.02. Home Rule. A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties and cities of its class, and is within such limitations as the legislature may establish by general law, This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

Section 8.05. Intergovernmental Relations. Nothing in this constitution shall be construed 1) to prohibit the cooperation of the government of this state with other governments, or 2) the cooperation of the government of any county, city or other civil division with any one or more other governments in the administration of their functions and powers, or 3) the consolidation of existing civil divisions of the state. Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with any one or more other governments.

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Periodical Sources:

"Metropolitan Areas" Department of NATIONAL CIVIC REVIEW (published monthly by the National Municipal League) contains reports on major developments in metropolitan areas, edited by William N. Cassella, Jr.

Metropolitan Area Problems: News and Digest, edited by George H. Deming (see citation under Bibliographies).

"Metropolitan and Fringe Area Developments," an annual report by John C. Bollens in the Municipal Year Book published by the International City Managers' Association, 1313 East 60th Street, Chicago 37, Illinois.

For a list of journals and other periodicals which carry articles on metropolitan problems see Appendix I of Metropolitan Areas: A Bibliography and the 1955-1957 Supplement.