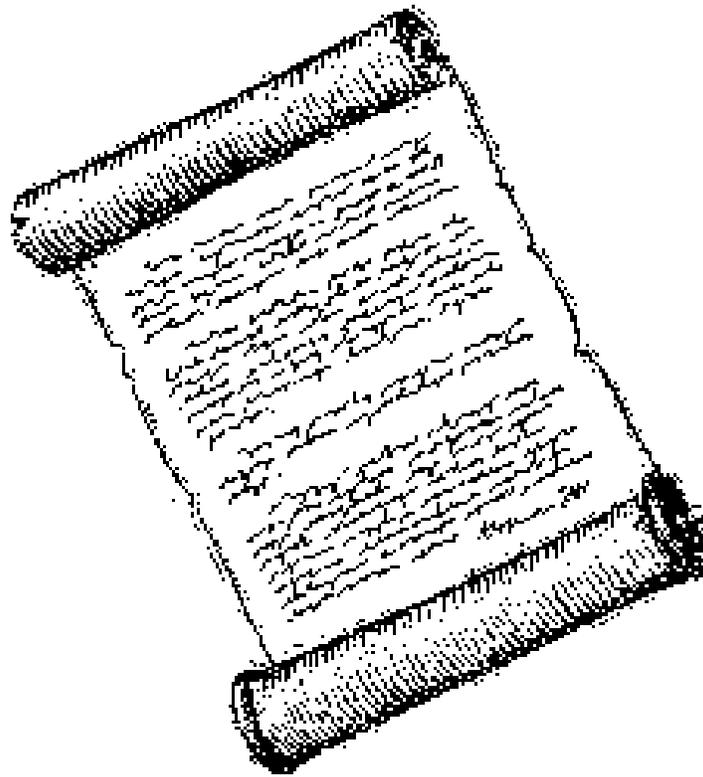


WAYNE COUNTY CHARTER ISSUES . . .

DEBT CONCEPTS AND PROVISIONS FOR MICHIGAN CHARTER COUNTY GOVERNMENT

By David Baker Lewis and Louis H. Schimmel



CITIZENS RESEARCH COUNCIL OF MICHIGAN

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Report No. 272

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DEBT CONCEPTS AND PROVISIONS FOR MICHIGAN CHARTER COUNTY GOVERNMENT

I. INTRODUCTION

Article VII, Section 2 of the Constitution of the State of Michigan of 1963 (the “Constitution”) provides as follows:

“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.” (Emphasis supplied).

Pursuant to State authorizing legislation and procedures implemented under such authorization Wayne County has begun a process for the analysis, review, preparation, drafting and submission of a county charter to the electors of Wayne County. The purpose of this paper is to review concepts related to authorizing debt provisions under the Constitution of the State of Michigan and to define the issues involved in developing debt provisions for the Wayne County Charter. This paper will also analyze debt provision alternatives by comparing the concepts of such provisions as they might be included in a Wayne County Charter. This paper does not seek to analyze statutory provisions pursuant to which county debt may currently be incurred or to suggest any revisions to such provisions which might be necessary or desirable in the implementation of any of the debt authorizing concepts discussed herein.

The Michigan Charter County Act, Act No. 293, Public Acts of 1966, as amended through Act No. 7, Public Acts of 1980 states in relevant part as follows:

“Section 14. A county charter adopted under the provisions of this act shall provide for all of the following:

...

(1) A debt limit of not to exceed 10% of the state equalized value of the taxable property within the county.”

Under this provision the Wayne County Charter Commission is required to include such a debt limit in its proposed charter to be submitted to the electors of Wayne County.

II. COUNTY DEBT PROVISIONS OF THE MICHIGAN CONSTITUTION OF 1963

Article VII, Section 2 of the Michigan Constitution of 1963 (the “Constitution”) authorizes any county to adopt, amend or repeal a county charter in a manner provided by law. Section 2 provides that such law shall “restrict the powers of charter counties to borrow money and contract debts.” The Framers of the Constitution intended that a charter county would be required to “comply with property tax rates and debt limits established by general law.”

Article VII, Section 11 of the Constitution provides as follows:

“No county shall incur any indebtedness which shall increase its total debt beyond ten percent of its assessed valuation.”

This limitation on the county to incur indebtedness revised the comparable provision in the 1908 Constitution (Article VIII, Section 12) to increase the limitation from 3% to 10% in order to “give counties greater power to meet ... current problems.” The Constitutional Convention comment with respect to Section 11 states in relevant part as follows:

“Counties are now extending their credit for both primary and secondary purposes. Secondary obligations are incurred by placing the full faith and credit of the county behind the bonds of cities and townships to enable them to borrow at the lowest possible interest rate for the construction of water and sewage systems and other public works.

“Secondary debt may easily exceed the three percent limitation set in the present [1908] constitution. It is payable out of the revenues of water-works, sewage fees, airport activities and the like.”

The meaning of indebtedness as used in the Constitution cannot be altered by legislative action or local initiative.

Finally, Article VII, Section 34 of the Constitution provides as follows:

“The provisions of this constitution and law concerning counties, townships, cities and villages, shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

The purpose of Section 34 is to instruct the judiciary of the state to give a broad and liberal construction to constitutional provisions or statutes relating to local units of government. The Constitution extends such principles of constructions for counties in this section where it had not existed in the 1908 Constitution.

A recent construction of portions of the above constitutional provisions can be found in Alan v Wayne County, 338 Mich 210, 200 N.W. 2d 628 (1972), 67 A.L.R. 3d 1079.

III. WAYNE COUNTY BOND AND NOTE DEBT

There are several statutes which provide for the issuance of debt (bonds and notes) by Michigan counties. Under the provisions of the Municipal Finance Act, Act 202, Public Acts of Michigan, 1943, as amended, obligations of a local unit of government are defined to be:

“Evidence of indebtedness such as bonds, refunding bonds, notes, certificates of indebtedness, contracts or assessments for the payment of bonds, and other similar instruments, ... issued or incurred by a municipality, which are general obligations of the municipality, or which on their face, meet any or all of the following requirements: (i) Pledge the full faith and credit of the municipality. (ii) Are payable primarily or secondarily from taxes or special assessments, or both.”

Local units of government in the State can issue obligations (debt) only as authorized by the Constitution or by law. The Supreme Court of Michigan has held that self-supporting, self-liquidating revenue bonds do not constitute debt within the meaning of constitutional limitations. The County may issue revenue bonds as authorized by law but such bonds do not constitute debt of the County unless a portion of county credit is pledged to the repayment of such bonds. As stated above, the Constitution limits a county's indebtedness to 10% of its State equalized valuation for bonds and notes which pledge its full faith and credit. There is no limitation for bonds and notes which do not pledge a county's full faith and credit.

Since the passage of the 1978 "Headlee Amendment" to the Constitution, there are two types of full faith and credit pledge bonds and notes which may be issued—both of which are subject to the 10% constitutional limitation. The two types are as follows:

1. Unlimited Tax Full Faith and Credit bonds and notes which must be approved by a vote of the County's electors. Such bonds and notes provide for the mandatory levying of general ad valorem (at large) property taxes without limitation as to rate or amount. This means that the county must levy whatever tax rate is necessary to produce funds, which when added to the available funds, is sufficient to retire bond principal and interest payments as they become due. The County currently does not have outstanding any unlimited tax credit bonds which annually require the levy of an ad valorem tax without limitation as to rate or amount.

2. Limited Tax Full Faith and Credit bonds do not require a vote of the electors and unlimited ad valorem property taxes may not be levied for the payment of these bonds. If revenues are not sufficient to pay bond principal and interest on these bonds when due, the county pledges to use and advance general fund revenues to pay principal and interest requirements but is without authority to and is prohibited from levying unlimited property taxes to produce sufficient funds.

Wayne County's limit for credit pledged bonds (both limited and unlimited) is calculated as follows:

1980 Wayne County State Equalized Valuation = \$16,624,563,950

10% of the above = debt limit - \$1,662,456,395.

Wayne County has outstanding credit pledged debt totaling \$401,380,190 or 24.1% of its debt limit.

The Wayne County Debt Statement on the following page shows the amount of outstanding bonds (both credit pledged and without credit pledged) issued by the County. The Debt Statement also shows the County's share of overlapping debt, which is described later.

The purposes of the above-referenced kinds of debts authorized to be issued by the County are as follows:

1. Tax and Revenue Anticipation Notes. Such notes are short term securities which permit the County to borrow (usually for no more than one year) funds from lenders to be used to pay operating expenses of the county in anticipation of tax revenues or tax based state shared revenues to be received. All or a part of such revenues as received are segregated and are used to pay principal and interest on such notes when they become due. The issuance of such notes permits the County to better manage its fiscal affairs through an orderly management of its cash.

2. Delinquent Tax Payment Notes. Such notes are issued to borrow money in anticipation of the collection of delinquent real property taxes. The notes are repaid from the collection of delinquent property taxes, the interest which accrues thereon and all collection fees with respect to such delinquent taxes in addition to any amounts repaid to the County from any local units because of the uncollectibility of such taxes.

3. Airport Revenue Bonds. Under state authorizing legislation the Wayne County Road Commission is provided power to operate, maintain and improve the Detroit Metropolitan Wayne County Airport. For the purpose of providing airport facilities the County is authorized under law to issue its bonds to be repaid over a period of years to acquire such airport facilities. Such bonds are paid primarily from certain fees and rentals received by the Wayne County Road Commission from air carriers who service the Detroit Metropolitan Wayne County Airport. In addition, the County is permitted to pledge the advancement of monies in its general fund for payment of such bonds if such fees and rentals are at anytime insufficient to pay principal and interest on such bonds when due.

4. Wayne County Drain Bonds. In accordance with law the County may issue drain bonds for the purpose of acquiring and improving drain facilities within the County to service the needs of the local communities therein. Such bonds are primarily payable from assessments imposed for drain services provided to users of such drain facilities. The County may pledge its credit to pay principal and interest on such bonds if at anytime such assessments are insufficient to pay principal and interest when due.

WAYNE COUNTY DEBT STATEMENT

COUNTY CREDIT PLEDGED

<u>Kind of Indebtedness</u>	<u>Issued By</u>	<u>Gross Outstanding As of 4-2-81</u>	<u>Self-Supporting Or Portion Paid Directly by Benefited Municipalities</u>	<u>Net</u>
Operating Tax Anticipation Notes	County Board of Commissioners	\$ -0-	\$ -0-	\$ -0-
Delinquent Tax Payment Fund Notes	County Treasurer	55,260,000	55,260,000	-0-
Airport	County Road Commission	107,935,000	107,935,000	-0-
Drain	County Drain Commission	101,006,390	98,119,329	2,887,061
Water	County Road Commission	17,975,000	17,975,000	-0-
Sewer	County Board of Public Works	48,255,000	48,255,000	-0-
Sewer	County Road Commission	39,405,000	39,405,000	-0-
Transportation Fund	County Road Commission	30,300,000	30,300,000	-0-
Joint Building Authority	Detroit-Wayne County Joint Building Authority	<u>1,243,800</u>	<u>-0-</u>	<u>1,243,800</u>
Total Credit Pledged Bonds and Notes		\$401,380,190	\$397,249,329	\$4,130,861
Per Capita County Debt (1980 U.S. Census 2,270,271)				\$ 1.82
% County Debt to 1980/81 E/V (\$16,624,563,950)				.02%

NO COUNTY CREDIT PLEDGED

Sewer	County Road Commission	\$ 55,000	\$ 55,000	\$ -0-
<u>OVERLAPPING DEBT OF COUNTY</u>				
Cities, Villages, and Townships				\$ 456,651,622
School Districts				507,664,015
Community Colleges and Intermediate S/Ds				97,202,860
County Issued Bonds Paid by Local Municipalities				<u>203,809,329 *</u>
Net Overlapping Debt				\$ 1,265,327,826
Net County and Overlapping Debt				\$1,269,458,687
Per Capita County and Overlapping Debt				\$ 559.17
% County and Overlapping Debt to 1980/81 E/V				7.64%

*A large portion of this amount will be paid from water and sewer system earnings.

5. Wayne County Water and Sewer Bonds. In accordance with law the County may issue water and sewer bonds for the purpose of acquiring and improving water and sewer facilities within the County to service the needs of the local communities therein. Such bonds are primarily payable from rates and fees charged for water and sewer services provided to users of such water and sewer facilities. The County may pledge monies from its general fund to pay principal and interest on such bonds if at anytime such rates and fees are insufficient to pay principal and interest when due.

6. Motor Vehicle Highway Fund Bonds. In accordance with law the County may issue motor vehicle highway fund bonds to make improvements and extensions to the County highway and road system. Such bonds are primarily payable from weight and gas taxes pledged for such purposes.

7. Building Authority Bonds. Pursuant to state law the County formed (with the City of Detroit) the Detroit-Wayne County Joint Building Authority (the Building Authority) for purposes of acquiring the City-County Building and the Murphy Hall of Justice (Recorder's Court). Such facilities have been acquired through the issuance of bonds for use of the county and city. Under its agreement with the Building Authority the County has covenanted to levy a tax in an amount sufficient on an annual basis to pay when due its portion of the principal and interest on the bonds issued to acquire such facilities. The County currently pays such sums from its annual levy for operating purposes.

Other units or agencies of state government with a jurisdiction coterminous with Wayne County may incur indebtedness for the purposes for which they were created, which indebtedness is to be repaid from ad valorem taxes levied upon assessable property within the corporate boundaries of the County. These include the Wayne County Community College, the Wayne County Intermediate School District, the Huron Clinton Metropolitan Authority and special authorization to the County with respect to construction of a new Wayne County Jail.

IV. DEBT ISSUANCE PROCEDURES

The process for issuing the debt listed in the table above generally follows a procedure whereby the operating entity which provides day-to-day management of the facilities or system involved, e.g. Wayne County Road Commission with respect to Detroit Metropolitan Wayne County Airport, prepares a list of capital needs for such facilities or system and makes arrangements for preliminary details with respect to issuing debt to acquire additional facilities or improve existing facilities. The project is then presented to the

Wayne County Commissioners or a committee thereof to seek approval to proceed with the project and make appropriate arrangements for issuing debt securities to interested purchasers. Such arrangements normally involve the passage of an ordinance by the County approving the issuance of the debt and providing the security through which the debt will be repaid. The operating entity then proceeds to market the debt and in exchange for securities promising repayment of sums loaned plus interest will receive monies from the marketing of such debt to be used to acquire or improve the facilities for which the securities were sold.

V. RANGE OF PERMISSIBLE COUNTY CHARTER DEBT PROVISIONS

A county charter provision authorizing the incurrence of indebtedness would seek to achieve as its purpose (1) an expression of applicable constitutional limitation upon the power to incur indebtedness, (2) to provide for the county to continue to incur debt for the reasons it may currently do so, and (3) to anticipate any form of debt which the county may need to incur in order to reasonably manage its affairs in the best interest of its citizens.

It is self evident that the range of permissible county charter debt provisions can be as broad as the minds *of* men and women can conceive as long as each provision from one end of the range to the other comports with constitutional prohibitions and limitation which apply and are in accord with the law as enacted by the highest legislative body of the state, the State Legislature. To this realization must be added the admission that the form of the debt authorizing provision in a county charter may be and probably will be largely influenced by the structure of such county charter. There are four basic forms for a county charter debt provision presented in this paper. Each is set forth below with a brief discussion of the advantages and disadvantages attendant thereto. The basic forms are as follows:

- (1) General authorization;
- (2) General authorization with limitation;
- (3) Specific authorization;
- (4) Specific authorization with limitation.

In addition, a county charter debt authorizing provision could provide directives with respect to execution of such instruments.

A. General Authorization.

A form of general authorization for the incurrence of debt by a charter county is as follows:

“The county may incur indebtedness and borrow money for any public purpose within the scope of its powers now or hereafter authorized by the constitution or by law and, in accordance with law, may pledge the full faith and credit of the county for payment of such indebtedness or borrowing.”

This authorization seeks to speak generally with regard to the power of the county to incur indebtedness and borrow money. No limitations are expressly set forth in this form of authorization upon the theory that such limitations as imposed by the Constitution or by law are implicit in its provisions and that such limits may be subject to change from time to time. The form of general authorization is intended to be as flexible and fluid as the changing needs of county society may require subject to the implicit limitations it embraces. It does not seek to enumerate the specific kinds of indebtedness or borrowing in which the county can engage, nor does it seek to enumerate the specific limitations which the Constitution or law may place on the kinds of indebtedness or borrowing which it may incur.

B. General Authorization with Limitations.

A form of general authorization with limitation would be as follows:

“The county may incur indebtedness and borrow money for any public purpose within the scope of its powers now or hereafter authorized by the constitution or by law and, in accordance with law, may pledge the full faith and credit of the county for payment of such indebtedness or borrowing.

“The indebtedness incurred by the county shall not exceed the limit prescribed now or hereafter by the constitution or by law.”

This form of general authorization with limitations contains the advantages of the general authorization alone. In addition, however, it explicitly provides for the limitations on the general authorization. The form does not seek to articulate the precise limitations on incurrence of indebtedness or borrowing at the time the county charter is approved since these limits may be changed and such change could require an amendment to the county charter.

The limitations could be extended to embrace a number of concepts which the above form does not articulate. For instance, the limitation could provide for approval by a body or person as set forth in its provisions prior to the incurrance of indebtedness or the borrowing of money under the general authorization provision. Also, it could contain a limitation upon authorization to incur indebtedness or to borrow money to provide a check and balance against the fiscal or financial condition of the county at the time the debt was to be incurred or the money to be borrowed.

C. Specific Authorization to Borrow.

A form of specific authorization to incur indebtedness and borrow money would be as follows:

“The county may incur indebtedness and borrow money in anticipation of the collection of taxes and revenues, in anticipation of the payment of special assessments, or for the purpose of acquiring drainage, water or sewerage systems or to acquire buildings for the conduct of county business or for such other public purpose as may be provided by law. The county may in the incurrance of such indebtedness or borrowing of such money pledge the full faith and credit of the county for the payment of such indebtedness or borrowing as permitted by law.”

The form of specific authorization to incur indebtedness or borrow money seeks to enumerate and establish a class of purposes for which the county may incur indebtedness. Although the provision would provide authority to incur indebtedness or borrow money for such other public purposes as permitted by law, it is a principle of construction that the general authorization is constrained by the general types of indebtedness or borrowing enumerated within the provision. The form would seek to enumerate in general terms the specific kinds of indebtedness the county could incur or the specific kind of borrowing in which it could engage. This is often difficult to achieve in reality since a complete knowledge of all existing kinds of indebtedness or borrowing would be a prerequisite to full use of such a provision. Subsequent legislation authorizing new kinds of indebtedness might require or make desirable a county charter amendment to bring such new kind of indebtedness or borrowing within the literal provisions of the County Charter.

D. Specific Authorization with Limitation.

A form of specific authorization to incur indebtedness and borrow money with limitation:

“The county may incur indebtedness and borrow money in anticipation of the collection of taxes and revenues, in anticipation of the payment of special assessments, or for the purpose of acquiring drainage, water or sewerage systems or to acquire buildings for the conduct of county business or for such other public purpose as may be provided by law. The county may in the incurrence of such indebtedness or borrowing of such money pledge the full faith and credit of the county for the payment of such indebtedness or borrowing as permitted by law.

“The indebtedness incurred by the county shall not exceed the limit prescribed now or hereafter by the constitution or by law.”

This form will provide specific authorization for certain kinds of indebtedness or borrowing and specific limitations with respect to such indebtedness or borrowing. It does not seek to provide significant flexibility but seeks instead to tailor the provision to the known use of debt incurrence and borrowing powers at the time of adoption of the provision. A choice of this form obviously favors specificity to general flexibility. The needs of the county and its citizens as viewed through the eyes of the charter commissioners will assist in the determination of whether this form is an acceptable one to submit to the electors. The likelihood that the specific form of authorization may require amendment as a result of unforeseen kinds of indebtedness or borrowing is a factor for the Charter Commissioners to consider.

The above four forms could be combined such that the general and specific form of authorization are contained in the same provision. The desirability of using any of the above listed forms or any combination thereof or any other form is, of course, the prerogative of the County Charter Commissioners whose responsibility it is to draft a county charter.

The debt authorizing provision may include a statement with respect to the taxability of indebtedness or borrowing of the County. Under state law such obligations and the interest therein are exempt from taxation within the state (except for inheritance and transfer taxes) and under federal law interest upon such obligations is exempt from federal income tax. The debt authorizing provision may include a statement on this subject in many forms. A form for consideration of the subject would be as follows:

“The obligations of the county issued under the provisions of this paragraph shall be exempt from county taxation.”

Although not normally found in a debt authorizing provision, it will need to be clear in the final form of the county charter (perhaps in the Schedule) to be submitted to the Governor to be reviewed by the Attorney General and ultimately submitted to the electors of the county that nothing contained in the terms of the county charter so submitted is intended to impair the obligation of contract duly authorized, executed and delivered prior to the adoption of the county charter.

VI. CONCLUSION

This paper provides a basis for deliberation as to the nature and form of the debt provisions to be contained in the Wayne County Charter. The forms of provisions set forth herein are purely for discussion and deliberation purposes and are not intended to be suggestions for provisions to be included in the county charter. It is suggested that the Committee of the Charter Commission examine debt authorizing provisions in other county charters to determine whether such forms would be compatible with the preferences of the County Charter Commissioners for a debt provision in the Wayne county charter. Finally, the debt authorizing provision must be compatible with whatever form of county reorganization the County Charter Commissioners adopt.