



CRC SPECIAL REPORT  
**MICHIGAN CONSTITUTIONAL ISSUES**



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Tenth in a series of papers about state constitutional issues

**ARTICLE VII – LOCAL GOVERNMENT**

**In Brief**

At the November 2, 2010 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the 1963 Michigan Constitution. The question appears on the ballot automatically every 16 years as required by the Constitution. The Constitution provides that a convention would convene in Lansing on October 4, 2011. If the question is rejected, it will automatically appear on the ballot again in the year 2026.

The Citizens Research Council of Michigan takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in this paper will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

In addition to providing authority and power to the three branches of state government, the Michigan Constitution authorizes and empowers local governments. For counties and townships, the constitutional provisions describe their structure and powers. For cities and villages (and to a lesser extent charter counties), the constitution authorizes home rule provisions for their own self governance. A constitutional convention might be expected to examine the structure of local government in Michigan, the strength of home rule that should be authorized, the use of metropolitan government, and the removal of elected officials.

Local government finance will be discussed in context of our analysis of Article IX – Finance and Taxation.

**Introduction**

Thus far, CRC's series of papers analyzing constitutional issues has focused on citizens' rights, the electorate, and the three branches of government. This paper focuses on public corporations, which are organizational structures that may be vested with constitutional status. Public corporations may be divided into two categories: (1) municipal corporations and other local governmental units including counties, townships, and metropolitan districts and (2) public corporations organized for specific purposes, such as the state universities. While both types of public corporations are of constitutional concern, this paper is confined to the questions respecting the constitutional position and authority of municipal corporations—including the important question of home rule status.

**Local Government Structure in Michigan**

Much of Michigan's system of local government or-

ganization was established in the Northwest Ordinance of 1787, and was institutionalized in the 1835, 1850, 1908, and 1963 Constitutions. The 1963 Constitution made relatively few changes in the basic structure of local government. The system of local government in Michigan is composed of counties, townships, cities, villages, and special districts. The number of local units in Michigan has changed relatively little since the 1963 Constitution was adopted.

General-purpose local units of government—counties, cities, villages, and townships—provide a broad range of services. The entire state is organized into counties and each citizen lives in one county. The entire state is also organized into cities and townships and each citizen lives in either a city or a township, but not in both – they do not overlap. A township resident might also live in a village, which has its own government, but also remains part of the township.



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Counties were originally organized to serve as administrative arms of state government, providing local services and maintaining records. In that capacity, they are responsible for recording births, marriages, and deaths; recording the ownership of real property; providing police protection; and prosecuting those accused of criminal activities. Counties also bear some responsibility for the courts; jails; oversight of property assessing and elections administration; construction of some roads and bridges; provision and maintenance of drains; and health services. Some counties provide local government services in addition to those performed for the state, including parks, airports, libraries, public transportation, and refuse disposal.

Townships and some villages are organized under general state laws that prescribe their governmental structure and powers. Cities and some villages have created their own charters under home rule powers that allow each government's local populace to frame its own charter, determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, adopt nonpartisan at-large elections if it wished, and establish its own accounting and auditing controls.

The different authorizing laws and the exercise of home rule make an all inclusive list of services provided by cities, villages, and townships in Michigan difficult to assemble. Cities and townships are universally responsible for 1) property assessment as a basis of state, county, municipal, and school taxation; 2) tax collection for their own purposes and on behalf of the state, counties, and schools; and 3) the conduct of municipal, school, county, state, and national elections. Additionally, cities are required to provide for the public peace and health and for the safety of persons and property within their jurisdictions. Commonly provided local government services include police and fire protection, water and sewerage, parks and recreation, refuse collection, roads and sidewalks, libraries, streetscapes, and economic development.

Special authorities are limited-purpose governments that exist as separate corporate entities created for the purpose of combining local government resources to achieve a common goal desired by each of the involved local governments. State law provides for the creation of special authorities and for their organization, powers, and duties and provides substantial fiscal and administrative independence from general-purpose units and other special-purpose local governments. The jurisdiction of

these authorities overlaps existing boundaries of other general-purpose or special-purpose units. Some of the more common purposes for special authorities include fire protection, libraries, mass transportation, airports, solid waste, and water and sewer.

The most significant qualitative change over the past four decades has been a blurring of the differences between cities, villages, and townships. Additional powers have been granted to villages and townships, consistent with those possessed by cities. State mandates for particular types of local governments to provide specific services have been eroded. The ability of cities and villages to annex township land has been diluted. Today, Michigan's urban areas have a number of villages and charter townships intermingled among the state's biggest cities.

The primary cause of these changes was enactment of the charter township act. Although enacted in 1947, it was not until the late 1960s and 1970s that townships began adopting charter status in large numbers. Charter township status has allowed townships in urban areas to provide a full range of municipal services, paralleling those provided by neighboring cities in every way except maintenance of roads and bridges. In 2000, 15 of the 50 most populated local governments in Michigan were charter townships.

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# CRC SPECIAL REPORT ON MICHIGAN CONSTITUTIONAL ISSUES

The only noteworthy quantitative change in the number of local governments over the past 45 years has been in the number of special authorities that are created when local governments collaborate for the provision of services. The modest decline in

the number of townships reflects their incorporation as cities, mostly in the 1960s. More recently, the transformation of the villages of Clarkston and Chelsea to cities shrank the size of the surrounding townships, but did not eliminate the townships. The

incorporation of Grosse Pointe Shores as a city eliminated two townships because the former village straddles Macomb and Wayne counties. There was a net increase of only seven general-purpose local units between 1962 and 2010. (See **Table 1.**)

**Table 1**  
**Number of Units of Local Government in Michigan**

	<u>1962</u>	<u>2007</u>	<u>Change</u>
Counties	83	83	-0-
Townships	1,259	1,240	- 19
Cities & Villages	<u>509</u>	<u>535</u>	+ 26
Sub-Total	1,851	1,858	+ 7
Special Authorities	99	456	+357

Source: 1962 and 2007 Census of Governments, Bureau of the Census, U.S. Department of Commerce.

Most of the general purpose local units serve relatively small populations. Only 128 (7 percent) of the 1,858 general purpose governments serve 25,000 or more people; 1,070 (58 per-

cent) serve less than 2,500 people, and 469 (25 percent) of these serve less than 1,000 people. These 1,858 general purpose local units have an estimated total of more than 18,000

elected officials.<sup>1</sup> (See **Table 2.**)

<sup>1</sup> See *The Long Ballot in Michigan*, Citizens Research Council of Michigan, Council Comments 951, November 1984, [www.crcmich.org/PUBLICAT/1980s/1984/cc0951.pdf](http://www.crcmich.org/PUBLICAT/1980s/1984/cc0951.pdf).

**Table 2**  
**Governmental Units in Michigan by Population Groups, 2000**

<u>Population Groups</u>	<u>Counties</u>		<u>Cities/Villages</u>		<u>Townships</u>		<u>Total</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
100,000 and over	20	24.1%	8	1.5%	0	0.0%	28	1.5%
25,000 - 99,999	38	45.8%	37	6.9%	25	2.0%	100	5.4%
2,500 - 24,999	24	28.9%	178	33.3%	458	36.9%	660	35.5%
Less than 2,500	<u>1</u>	1.2%	<u>312</u>	58.3%	<u>757</u>	61.0%	<u>1,070</u>	57.6%
Total	83		535		1,240		1,858	

Source: 2000 Census, Bureau of the Census, U.S. Department of Commerce.

## Constitutional Issues

Article VII contains 34 sections: 16 deal with county government; four with township government; six with cities and villages; and two with metropolitan government or joint administration. Six sections cover more than one type of local government. Other provisions that affect local government are scattered throughout the Constitution. Of the 80 proposed constitutional amendments that have been submitted to the voters since 1963, none have dealt with the local government article of the Constitution.

### Local Government Structure

A constitutional convention could examine the extent to which the present organizational structure of local government meets the current and future needs of citizens and businesses. While business location decisions in the past may have focused on Detroit or Southfield, Grand Rapids or Walker, or Traverse City or Charlevoix, businesses today compete on a global stage and could just as easily locate in India, Brazil, South Carolina, or Michigan.

A constitutional convention could examine the need for 1,858 local units of government, two-thirds of which serve fewer than 2,500 people. It might consider whether counties, townships, cities and villages, and special authority districts, with overlapping geographical boundaries, as well as overlapping powers and service responsibilities, are the most effective means of providing local services and the most efficient use of scarce public resources. A con-

stitutional convention might seek to “reinvent” local government.

Arguments have been made that the local government structure needs to be reorganized to define the power and authority relationships between counties and municipalities in both service delivery and regulatory functions. A simplified local government structure could include a municipal level of government consisting of two classes of municipalities, charter cities and townships, equal in their relationship to each other and other levels of government. This new framework of municipal government would eliminate the intermediate form of government, the village.

Other reforms might focus on the roles played by counties and townships. Convention delegates might focus on the problems inherent in attempting to solve local or regional problems at the state level. Advocates of change might focus on the perceived shortcomings of the state government and propose either to strengthen counties to usurp some responsibilities currently vested with the state or to create regional governance structures with taxing and spending powers.

Some may focus on activities that are provided at the most local levels in Michigan, but are provided at the county level in most other states – elections, property assessment, and tax collection. Should a constitutional convention choose to reform local government by charging counties with responsibility for these services,

many of Michigan’s least populated, most rural townships would exist solely to define the location of property within each county and for planning and zoning purposes. The levy of taxes would then relate to each township’s decision to provide other services (police and fire protection, refuse collection/disposal, etc.).

These types of structural reforms of local government are likely to occur only through a constitutional convention. Neither petition-initiated constitutional amendments nor legislatively-initiated reforms seem capable of achieving such wholesale change.

Reforms of this type could simplify local government, but caution should be exercised about their potential for “fixing” local government. It is not clear that the potential gain of business attraction that might come with governmental consolidations, and the resulting larger local governments with more bureaucracy, would be worth the surrender of local political control and the connection many feel with small government. The savings that may result from these potential reforms are rather insignificant in the big picture of Michigan’s government finances. The cost of operating villages and less populated townships, or the cost of a few activities that could be better provided by counties, pale in comparison to the cost Michigan’s urban cities incur to provide public safety, water and sewer, and other municipal services. The reforms that would help city governments to attract and retain people and businesses

generally are not matters that should be addressed by a constitutional convention.

## County Officers

### Board of Supervisors

States have considerable discretion in drafting the fundamental laws that govern their operations and that affords rights to their citizens. State constitutions, however, are bound by the parameters of the United States Constitution and may not violate the provisions contained in that document. State constitutional provisions that are obsolete because they violate the provisions of the federal constitution make the language of a state constitution confusing and misleading. These provisions should be removed or revised to reflect the current status of law.

The provisions in Section 7 that establish county boards of supervisors are not consistent with the federal constitution. The county boards of supervisors in each county were to consist of one member from each organized township and representation from cities as provided by law. Like the legislative redistricting provisions in Article IV, this language was drafted at the same time precedent-setting legal cases were being decided by the U.S. Supreme Court establishing the “one person, one vote” principle.<sup>2</sup> With equal representation granted to all townships, the vote

of a supervisor representing a township with a population of 1,000 was equal to the vote of a supervisor from a township of 10,000; and the number of people represented by members of the boards from cities could be wholly different. In 1966, the Michigan Supreme Court held that the method of apportioning county boards of supervisors violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.<sup>3</sup>

As a result of the U.S. Supreme Court’s one person-one vote decisions, boards of supervisors were replaced with county boards of commissioners that are smaller, more partisan, and representative of people rather than units of government. County commission election districts are drawn to be as nearly equal in population as is practicable based on the latest official published decennial U.S. census. They are to be contiguous, compact, of as nearly square shape as is possible. Finally, they must respect township, village, and city boundaries, and are not to be drawn to effect partisan political advantage.

The number of general law county commissioners is based on the population of the county as defined in statute:

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
100,001 to 50,000	Not more than 15
50,001 to 600,000	Not more than 21
over 600,000	25 to 35

The loss of the county boards of supervisors created a void. Because members of the boards of supervisors represented local governments, the county board meetings routinely brought together local government officials with the opportunity to discuss service provision. Appointed and independently elected county officials heard from the supervisors about the need for an expanded county role, the services that local units were providing adequately, and the services for which local governments would benefit from county cooperation. The move to independently elected county commissioners reduced counties’ connection to local units. Where supervisors were inherently prepared to address the needs of the local governments they represented, county commissioners tend to be aware of the needs of the local governments only when they make special efforts to learn of those needs.

At a minimum, a constitutional convention could be expected to bring Article VII into compliance with current day practice in the selection of county commissioners. Beyond that, a convention may seek to create a structure that reconnects counties with the local governments so that activities are performed in the most efficient manner and intergovernmental collaboration – arguably a principal function of counties – is facilitated to a greater extent than is currently the practice.

### County Administration

Of all the types of local governments in Michigan, not one oper-

<sup>2</sup> See *Article IV – Legislative Branch*, Citizens Research Council of Michigan, Report 360-07, May 2010, [www.crcmich.org/PUBLICAT/2010s/2010/rpt36007.html](http://www.crcmich.org/PUBLICAT/2010s/2010/rpt36007.html).

<sup>3</sup> *Advisory Opinion re Constitutionality of Public Act 261 of 1966*, (380 Mich 736; 1966).

ates under a more antiquated structure than the counties. Four counties have taken advantage of alternative organizational structures available to all counties, but the other 79 counties operate without a single executive officer to lead the government. County commissions share legislative and administrative duties and power is further disbursed among the many independently elected constitutional officers: prosecuting attorney, clerk, register of deeds, treasurer, and sheriff. Power is further disbursed to the drain commissioner and the boards of county road commissioners.

Notwithstanding the change from county boards of supervisors to boards of commissioners, this basic structure has existed since statehood in the 1830s. It reflects the counties' role as administrative arms of the state and the principle of Jacksonian democracy, the early to mid-19th century political theory that held that the problem with government was the appointive status of government officials. The cure proposed was to have as many officials as possible elected directly to short (two-year) terms. This approach, which would theoretically keep democracy close to the people, reflected the frontiersman's belief in personal versatility and his suspicion of specialization. Government was not believed to require specialized skills or training. It was hoped that the fragmentation of power and frequent turnover of officials would prevent the formation of a government aristocracy.

The 1963 Constitution attempted to provide an alternative to this

antiquated form of local government by authorizing charter, or home rule, counties. It was hoped that home rule powers would provide counties with the ability to streamline county government and minimize the number of boards, commissions, and authorities common in the administration of county government. Counties now have two organizational alternatives to the general form: optional unified county government or charter county government. The optional unified form provides for an elected or appointed county executive and some power to reorganize the departmental structure, but in the main the core powers of the boards of commissioners, as well as the "row" officers, are undisturbed. Under the charter county form, the powers of a county executive are somewhat stronger and the options for reorganization a little greater than under the other forms. However, the requirement in Section 4 that each county independently elects a sheriff, clerk, treasurer, register of deeds, and prosecuting attorney cannot be undone by statute.

In some counties, the broad distribution of power among many officials has created deadlocks in the budgeting processes. Each elected officer is the administrative head of a department, and even in those counties with elected county executives power is not sufficiently centralized for that person to assume control of hiring and firing personnel or arranging the organization of those departments. At times of economic contraction, when many local governments are cutting the size of their budgets, the lack of

a single executive officer with control over administration of the county, and a lack of budgetary control by the county commissions, complicates the ability to manage the counties' assets and operate within the resources available.

A constitutional convention could reexamine the constitutional provisions for county government to allow greater flexibility to change officers from elected to appointed status, reorganize administration of the county, and effect the changes needed to bring county government into the twenty-first century.

## Home Rule

The state constitution defines the legal relationship between the state and local governments. It establishes the relative degree to which local governments are dependent on, or independent from, state control. The dichotomy between state control and local self government is illustrated by Dillon's Rule and the Cooley Doctrine. The theory of state preeminence over local governments was expressed as Dillon's Rule in an 1868 case:

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.<sup>4</sup>

<sup>4</sup> *Clinton v Cedar Rapids and the Missouri River Railroad*, (24 Iowa 455; 1868).

In contrast to Dillon’s Rule, the Cooley Doctrine expressed the theory of an inherent right to local self determination. In a concurring opinion, Michigan Supreme Court Judge Thomas Cooley in 1871 stated: “[L]ocal government is a matter of absolute right; and the state cannot take it away.”<sup>5</sup>

The continuing tension between Dillon’s Rule and the Cooley Doctrine is the attempt to balance matters of statewide interest against the rights of communities to determine their own government. Through a state constitution, the people can establish the structure of local government and the distribution and balance of powers between the state government and local governments.

The last two constitutions cast Michigan as a strong home rule state, consistent with the Cooley Doctrine. The Michigan Constitution of 1908 provided home rule for cities and villages. The 1963 Constitution built on that authority for cities and villages and extended the option of home rule to counties. The Michigan Constitution is one of 37 state constitutions that provide home rule for cities and one of 23 state constitutions that give home rule powers to counties. Home rule is almost universally employed to adopt city charters, but only a minority of villages have adopted home rule charters. Macomb and Wayne are the only counties that

have adopted home rule charters. Townships do not have home rule powers.

During the Progressive Era (1890 – 1920), when Michigan initially adopted its home rule provisions, the goal was to give local governments a broad range of local discretion to act and adopt policies with minimal direction, influence, and interference from state officials. Prior to that time, an excessive amount of legislative action was focused on the enactment of local acts, at times micromanaging the affairs of local governments. It was reasoned that better governance could result if the local populace could frame their own charters, determine how best to secure representation on their city councils, provide their own means for selecting mayors and administrators of the city activities, define the powers that might be exercised, and establish their own financial controls. Not only was it hoped that home rule would cause local officials to be responsible, but it was hoped that home rule would cause local government to be more responsive to the needs and wants expressed by local residents.

The question of continuing home rule for Michigan’s local governments and determining the relative home rule powers may be one of the most monumental issues that a constitutional convention would confront. The convention delegates that drafted the 1908 and 1963 Constitutions clearly favored home rule and provided broad powers for cities and villages, and to a lesser de-

gree counties. Over the century that Michigan has experimented with home rule, it is not clear that everyone has held home rule in the same regard. For while the constitution, as the supreme law of the state, provided broad home rule authority to local governments, various actions by the legislature and the courts have weakened it.

The underlying tension comes in determining whether matters are of statewide interest, and therefore should be addressed by state laws and administrative rules, or matters of local concern that each community should be free to address in ways that reflect the values of their citizens. While the Constitution provides for a liberal interpretation of the powers of municipalities, and some court opinions have declared that municipalities have all powers not expressly denied, other court rulings adverse to home rule often have led municipal officials to seek legislative solutions clarifying the extent of their authority. Each directive and clarification that has been amended to the Home Rule Cities Act and Home Rule Villages Act has had the general impact of reversing the inclusive nature of the home rule powers toward an exclusionary approach.<sup>6</sup>

There are several examples of constitutional home rule powers that were lessened through legislation, administrative rules, and court

<sup>5</sup> *People v Hurlbut*, (24 Mich 44, 95; 1871).

<sup>6</sup> Kenneth VerBurg, *A Study of the Legal Powers of Michigan Local Governments: Comparing Cities, Townships, and Charter Townships*, (1960).

cases. Section 2 extended the authority for counties to adopt a charter, but court rulings restricted such a charter from infringing on the powers or method of selection of executive county officers.

Constitutional convention delegates sought to ease the burden on the property tax and to provide additional revenues to local governments. Section 21 provides that, “Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.” However, this constitutional taxing authority was immediately preempted by legislation prohibiting any local non-property tax unless it is specifically authorized by state statute.

Section 22 extends home rule powers to municipal government:

Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

But the courts have remained closer to Dillon’s Rule, taking the position that local governments derive their authority from the legislature. Contrary to the broad grant of authority, the courts have stated that:

[L]ocal governments have no inherent jurisdiction to

make laws or adopt regulations of government; they are governments of enumerated powers, acting by a delegated authority; so that while the State legislature may exercise such powers of government coming within a power designation of legislative power as are not expressly or impliedly prohibited, the local authorities can exercise those only which are expressly or impliedly conferred, and subject to such regulations or restrictions as are annexed to the grant.<sup>7</sup>

Attempts to legislatively intrude on home rule powers and court decisions to undo the exercise of those powers are found with regard to spending power, public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining and compulsory arbitration of police and fire labor disputes. As the state’s largest city, Detroit has been a frequent target of both legislative action, including statutory attempts to cause change to the method of selecting Detroit city council members,<sup>8</sup> and judicial decisions, such as a recent ruling

overriding the city’s ability to impose a living wage ordinance.<sup>9</sup>

The final section of Article VII, Section 34 was included to make clear the intent of the convention delegates that the provisions of the constitution and laws concerning counties, townships, cities, and villages are to be construed liberally in their favor and that the powers granted to counties and townships by the constitution and by law are to include those fairly implied and not prohibited by the constitution.

This section was added by the 1963 Constitution. Prior its addition, laws concerning the powers of counties and townships were written with specificity. In the years since, such laws have become briefer and have been written to liberally grant powers to those types of governments. In that regard, this provision can be seen as a success.

On the other hand, the evidence of diminishing home rule powers for cities and villages seem to indicate that Section 34 has held little sway in deciding inconsistencies between state laws and locally expressed powers in favor of the local governments.

The home rule powers laid out in the Constitution indicate that Michigan is a strong home rule state, but in practice Michigan cities and villages have far less

<sup>7</sup> *City of Kalamazoo v Titus*, 208 Mich. 252, 262, 175 N.W. 480 (1919).

<sup>8</sup> See *Election of Detroit City Council Members*, Citizens Research Council of Michigan, Memo #1063, regarding Public Act 432 of 2002, [www.crcmich.org/PUBLICAT/2000s/2002/memo1063.html](http://www.crcmich.org/PUBLICAT/2000s/2002/memo1063.html).

<sup>9</sup> See *Richard Rudolph V Guardian Protective Services, Inc.*, <http://coa.courts.mi.gov/resources/asp/ViewDocket.asp?casenumber=279433&yr=0&inqtype=public>.



home rule discretion than local governments in states such as Illinois and Colorado. In each of those states, within the scope of local responsibilities, the home rule units have considerably more discretion and freedom from state control than do comparable Michigan units.

A constitutional convention could choose to end Michigan's experiment with home rule, or diminish the home rule powers of local governments. Wording could be changed to limit home rule powers to selection of officers and creation of the rules within which local governments operate. Language could be adopted to place control over economic matters with the state.

Alternatively, a constitutional convention may wish to undo legislative actions, administrative rules, and judicial decisions by strengthening home rule. Such a preference would make the home rule powers self-executing. Local governments would no longer need empowering statutes to carry out the strong authority already granted in the constitution.

## **Municipal Control of Highways and Rights-of-Way**

Section 29 requires public utilities to obtain consent from counties, cities, villages, and townships for the right to use highways, streets, alleys or other public places. In essence, this section says that private entities should pay economic rents for the right to use public assets for business purposes.

A provision similar to Section 29 was first included in the 1908

Constitution. Neither Section 29 nor its predecessor (Section 28 of Article VIII in the 1908 Constitution) attempted to extend to local governments the ability to regulate public utilities. In addition to its own power to enact laws, the legislature has delegated the power to regulate utilities to the Michigan Public Service Commission (MPSC). The MPSC, whose history dates to 1873, has from time to time played a role in the regulation of railroads, electricity, telephone, natural gas, petroleum pipelines, motor carriers, and water utilities. A number of court cases since adoption of 1908 Constitution declared that the local control established in the Constitution preempts the MPSC's statewide interest in regulating the use of public highways and rights-of-way by public utilities.

Over the past two decades, the authority of local units to require franchises and just compensation for use of the public right-of-way by private utilities, including electric transmission, pipeline, telecommunication and cable service providers, has been undermined by legislative initiatives. In each of these areas, the control provided to local governments in Section 29 has been eroded by state legislative assertions of authority. In effect, these legislative actions have subordinated public control of public property (rights-of-way), and the economic rents payable for the use of that public property, to the interest of private businesses.

Local governments have not received relief on these issues from the courts. As part of a whole-

sale rehabilitation of a four-mile stretch of roadway in 1999, the City of Taylor (Wayne County) acted to reduce the number of automobile collisions with utility poles along Telegraph Road by relocating electric wires to below ground. The city and utility disagreed on responsibility for the cost of moving the wires. In ruling in favor of the utility, the Michigan Supreme Court decision in *City of Taylor v. The Detroit Edison Company* 475 Mich. 109, 715 N.W. 2d 28 (2006) shifted the preemption for control of public places from the local governments to the MPSC.

In previous cases dealing with similar questions, utilities were made to bear the cost of relocation as part of the cost of doing business as long as the relocation was in the course of the discharge of a governmental function. In overturning the precedent, the court relied on reasoning that the municipalities may exercise the constitutional power to pass ordinances and regulations with reference to their highways and bridges only to the extent that those ordinances and regulations are not inconsistent with the general state law. This was the first case to arise since the MPSC promulgated rules in 1970 governing the underground placement of new and existing utility wires. Since those rules now exist, the court ruling infers that counties, cities, villages, and townships may control their highways and other public places only to the extent that their actions are consistent with state law. The court's interpretive posture can be found in the opening paragraph of the analysis: Dillon's Rule is

confirmed as the lens through which a city's home-rule power will be examined.

A constitutional convention could address the conflict between the legislative powers of the state in regard to public utilities, and the regulatory powers delegated to the Michigan Public Service Commission to oversee public utilities, and the constitutional authorities of local governments to regulate use of the right-of-way. Consistent with the earlier discussion of home rule powers, a convention could act to clarify the state preemption of local government in the regulation of public utilities as a statewide concern, or strengthen the constitutional language to reinforce what had been, until only recently, how the law was interpreted.

## Metropolitan Government and Authorities

A number of public services transcend the borders of Michigan's local governments. Public transportation, major arts and cultural facilities, harbors and airports, water and sewer, and roads and bridges may provide benefits beyond the relatively small borders that characterize Michigan's local governments, or incurs costs of that are of sufficient magnitude that individual local governments cannot bear the burden alone. Each of these functions has its own constituency, yet all are oriented toward the region, rather than a single jurisdiction. Different population groups in the same part of the region may place greater or lesser value on certain regional functions. Sewerage is-

sues may be more pressing in one part of the region, while transit issues may be more urgent in another. But each function is essentially a creature of the region, not of individual jurisdictions.

As is the case with any array of services provided by an individual governmental unit, not all services are used equally by all residents of the jurisdiction. Police and fire protection blanket the city or township, while relatively few individuals may use a senior citizen center, but both may receive general tax support. In any general-purpose government, an implicit agreement exists that, while every service may not be used equally by every taxpayer, the menu of services funded by the jurisdiction will be supported by all the taxpayers. That menu may be controversial and may change over time but, in a government of any size, some tax-supported services will be used by virtually all residents, some by several, and some by very few.

Regional functions are subject to the same kinds of variation in utilization. However, no structure exists for the financing of competing regional services. Counties perform this task over a limited range of functions, but many regional problems do not respect county lines any more than city or township lines. This underlies the language in Article VII, Section 27, of the Michigan Constitution, which encourages multipurpose metropolitan authorities.

Notwithstanding any other provision of this constitution the legislature may estab-

lish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. *Wherever possible, such additional forms of government or authorities shall be designed to perform multipurpose functions rather than a single function.* [Emphasis supplied.]

Although the clear intent of this section was to encourage the development of governmental units that could provide multiple services on a regional basis, there has been very little movement in that direction during the nearly five decades since the adoption of the new constitution. Instead, the prevailing vehicles for delivering regional services have been interlocal agreements and single-purpose special authorities. Some of these authorities have limited taxing ability, some are funded by user charges, and some rely on the taxing authority of the general-purpose units they encompass, but truly multipurpose regional authorities are the exception, not the rule.

A constitutional convention may wish to consider alternatives to encourage greater use of multipurpose special authorities as appropriate responses to regional service needs.

## Removal of Elected Officials

In 2008, the eyes of Michigan were on the City of Detroit and the various efforts to remove then Mayor Kwame Kilpatrick from office. Section 33 provides that, "Any elected officer of a political

subdivision may be removed from office in the manner and for the causes provided by law.” Before he ultimately resigned from office, efforts to remove Mayor Kilpatrick under Article VII, Section 33, and Article V, Section 10 of the Michigan Constitution, and Section 327 of the Michigan Election Law were viewed by some as providing sufficient ambiguity

that the ability to carry out the removal could be challenged.<sup>10</sup>

There have been other local government officials that have been

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<sup>10</sup> See MCL 168.327 for removal of city officials, MCL 168.369 for removal of township officials, MCL 168.381 for removal of village officials, and MCL 168.207 for removal of county officials.

forced from office for misconduct related to their office and/or crimes unrelated to their office.

A constitutional convention could examine whether legal ambiguities and challenges to efforts to oust public officials are related to the strength of wording, or lack of same, in the constitutional provisions or in the statutes enacted to implement these provisions.

## Conclusion

One of the most significant issues a constitutional convention may address is balancing the powers of the state to empower, oversee, and control local governments and the local governments' interest in exercising the home rule powers currently provided in the constitution. Legislative action, administrative rules, and court rulings have eroded the spirit of home rule as it was originally envisioned by the drafters of the 1908 and 1963 Constitutions. Delegates to a 2011 convention

would likely provide clarity to the proper balance of the state and local government powers.

The current provisions for county boards of supervisors are inoperable because they violate the “one person, one vote” principle of the U.S. Constitution. Other reforms a constitutional convention could address in the local government article include efforts to streamline the structure of local government and creating greater flexibility to streamline

the administration of county government. It could be expected that a convention would attempt to provide greater direction on the conflict between the authority of local governments to control the use of their highways and public places by utilities and the power of the state to regulate those same utilities. Finally, a convention may choose to examine the need to address constitutional provisions related to multi-purpose special authorities and the removal of public officials.