



CONstitutional CONcepts

Number 12

A series of condensations of the ~~editorial~~ research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.

DOWNSTATE LOCAL GOVERNMENT

Alice L. Ebel

Do we need "home rule" for local government or is this concept already obsolete?

Should "home rule" be replaced by the newer concept of "residual powers"?

How adequate is the organization of our local governments to meet the age of the 21st century?

These and other questions are raised by the paper, "Local Government Outside Cook County," prepared by Alice L. Ebel, professor of political science at Illinois State University. This is one of a series of papers commissioned by the Governor's Constitution Research Group and is one of the background materials for the Constitutional Convention delegates.

The following is a summary of the 21-page original and does not purport to contain all the detail of the original. (See back page for further information.)

The purpose of local government is to administer state programs and to provide services desired by local citizenry. As agents of the state, counties, for example, are traditionally administrative units of the state. Cities, on the other hand, are organized primarily to provide local services.

Local units are often called "creatures" of the state because the state is the source of their legal powers. Generally, they are considered to have only those powers specifically conferred on them by the state or clearly implied in the powers expressly granted.

State courts have tended to interpret grants of power to local units very narrowly. Local units are permitted by the courts to perform a function only when the state has expressly given its consent or when the power is clearly implied in state law.

Development of Local Government in Illinois

The county, descended from the English shire, was the original local unit in Illinois. The township, derived from the New England town, became the predominant form of county government.

The 1848 Constitution authorized the General Assembly to provide for township organization as an alternative

to the commission form of county government. Under the township organization, which the legislature subsequently established, the county is governed by a board of supervisors who are elected as township officers and serve *ex officio* on the board. Today, 84 of the 102 counties have established township government by referendum; 17 retain the commission form; and, Cook County combines features of both types.

The rural nature of the State in its early years led to emphasis on the county as the principal local government. The present constitution has an article of 13 sections devoted to counties and no corresponding article for city government. Urban growth in Illinois, particularly since 1890, points up the obsolete nature of a constitution which gives so little attention to local government in urban areas. In 1890, rural people constituted 55.3% of the total population; in 1960, only 19.3% of the total.

The 1967 *Census of Governments* shows that Illinois leads the nation with 6,453 local units, some 29.1% higher than the next highest state and 296.9% higher than the average.

Township Counties

Many of the 84 downstate counties with township

organization have large boards of supervisors. As urban townships increase in size, assistant supervisors as well as supervisors are added to the board. A statutory formula exists, reducing the population requirement for each additional supervisor as the population of a county increases. Nevertheless, some counties still have large boards. For example, McLean and Madison have boards of 49; LaSalle and Sangamon counties, 51 and Champaign and St. Clair, 50.

With no full-time administrator or executive, boards of supervisors often founder as they try to cope with the increasingly complex matters. A further handicap is a large number of elective constitutional officials.

There are a number of appointed statutory county officers, such as county superintendent of highways, superintendent of the county nursing home, supervisor of assessments, and zoning enforcement officer. Add also quasi-independent multi-member boards such as a regional planning commission, T. B. sanitorium board, board of health, jury commission, and airport commission.

Commission Counties and Municipalities

The 17 commission counties, mostly small counties in southern Illinois, have three-member boards of commissioners elected at large. The commission county has all the elective constitutional officers plus many of the appointive officials and boards found in the township counties. The form of the commission counties is determined by the Constitution, while the boards in township counties are provided for only by state law.

Illinois outranks all other states in its number of municipalities or incorporated places. Under state law, the 1,256 municipalities are defined as cities, villages, or incorporated towns. Except for a few operating under special charters granted prior to the adoption of the 1870 Constitution, downstate municipalities are subject to general law.

The statutes provide options as to the form of municipal government. These are mayor-council or aldermanic form of government, commission, managerial, and trustee forms. The options have been established over a number of years with the managerial form for the larger downstate cities added as late as 1951.

Townships and Special Districts

The 1,432 townships have remained unchanged for many years and are often conterminous with the Congressional townships and, therefore, seldom include more than 36 square miles. Downstate townships are generally rural and many have declining populations. Their governments are organized wholly under state law.

Township elections, held separately, have notably small turnouts. The frequently uncontested slates of candidates for the offices of supervisor (and assistants), clerk, assessor, highway commissioner, collector (in a few counties over 100,000 population) and the three member board of auditors, combined with apathy toward a unit of government of little relevance to the average citizen, are indicative of the growing obsolescence of township government.

Among the large number of special districts, all authorized by statute, only the number of school districts has

declined. By 1967, the more than 10,000 found in 1945 had been reduced to 1,350. Other kinds of special districts increased from 1,800 in 1957 to 2,313 in 1967. Constitutional limitations on bonded indebtedness and statutory provisions limiting tax rates help encourage the formation of such taxing units.

The 1870 Constitution and Local Government

The constitutional treatment of local government in the present constitution is found primarily in *Article X, Counties*. This article has 13 sections, two of which (7 and 9) deal with Cook County exclusively and are, therefore, omitted here.

Sections 1, 2, and 3 of Article X guarantee a county against reduction in size by the General Assembly to less than 400 square miles and specify other requirements if a change is to be made. These guarantees are substantially the same as the ones incorporated in the 1848 Constitution. Section 4 deals with changing the location of the county seat.

In the 1870 Convention this section produced extended debate. The debate concerned two issues: How difficult it should be to remove a county seat and how frequently a proposal to do so should be permitted. The Convention was able to agree on a frequency of once every ten years but passed the matter of the size of the majority on to the voters at the time of the referendum on the Constitution. As between three-fifths or a simple majority, the voters chose three-fifths.

Sections 5 and 6 set up two types of counties: Those under township organization and those not under township organization. A majority of all voters voting at a general election is required to adopt the township form, but it may be abandoned by a majority of those voting on the question. The General Assembly is charged with providing for the government of township counties. No two townships may have the same name.

Counties not adopting the township form elect three officers to be known as the Board of County Commissioners who transact county business as provided by law. The General Assembly has provided for Boards of Supervisors in the township counties. County commissioners are found in about 17 other states, supervisors in 7 and 6 states retain the traditional county court system.

Section 8 contains a list of elective county officers: County clerks, sheriff, treasurer, coroner, circuit clerk and recorder (in counties over 60,000). Treasurer and sheriff are eligible for reelection only after the lapse of four years after the expiration of the term for which they were elected.

About a third of the state constitutions list as many elective officers, with 32 requiring an elected sheriff. Nine place limitations on the sheriff's term, five of which have an immediate reelection restriction. Two states prohibit a treasurer from succeeding himself.

The last four sections (10-13) of the article deal with compensation for county officers. A maximum dollar compensation limitation was deleted by a 1952 amendment which added that salaries were to be prescribed by law. These sections (including Sec. 9 concerning Cook County) were formulated to end the abuses of the fee

system of compensation, which enabled officers in populous counties to collect and retain the entire amount of the fees paid to them for their services. Now fees are to be uniform as to class, with the General Assembly authorized to classify counties into not more than three classes and with all elected or appointed "fee officers" required to make semi-annual reports.

Various sections of the Revenue Article (IX) set up tax and indebtedness limitations on local units. The Legislative Article (IV) prohibits special legislation (Sec. 22) in reference to "locating or changing county seats;" "regulating county and township affairs;" "incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village;" and "providing for the election of members of the board of supervisors in townships, incorporated towns or cities." The same article, as amended (Sec. 34), provides for the so-called "home rule" for Chicago.

Home Rule

Constitutional and statutory restrictions of local government became the stimulus, some years ago, for promoting incorporation of home rule provisions in state constitutions. Early constitutional home rule usually contained self-executing provisions. Included, were setting up a charter commission, submitting the draft of the charter to the people, amending a charter, and frequently a listing of the powers which the local unit was to be permitted to exercise. A statement that matters of local concern were the proper subject for local action and those of state-wide concern, for state action applies the federal principle to state-local relations. Endless litigation may be the result with delays frequently thwarting the principle of local self-government.

The newer "residual powers" approach to home rule offers what seems to be a desirable alternative. It entails granting permission to a local unit to exercise *any* function of government which is not specifically denied to all local units by general law. Such a grant endows a local unit with all the law-making power of the state legislature and at the same time permits the legislature by general law to deny localities specific powers. The flexibility of such home rule provision makes it possible for a city, county, or other local government to adapt its organizational structure and powers to its particular needs and desires.

Optional Charters

Not quite as flexible is an optional charter system. A charter is the basic law which defines the powers, responsibilities, and organization of a local unit of government. The legislature provides a group of charters, providing for different forms of government, and counties and cities may adopt, by referendum, one of the options. A constitutional article may specify optional charter forms.

Reform: Needs and Proposals

An increasing interest in local government and a recognition of some of the deficiencies of local government has led to many proposals for improvements and reforms. Proposals concern both the organization and powers of local governmental units.

The Constitution of Illinois is silent regarding local powers. This leaves the allocation of powers entirely to the legislature. Nevertheless, cities find their powers insufficient to carry on all desired services or to perform an unusual activity. County governments, particularly with growing populations, are currently acquiring many of the responsibilities of cities. They will find it difficult to do so in Illinois without broader grants of power.

The Committee for Economic Development would entrust governments, once modernized, with "broad legal powers permitting them to plan, finance, and execute programs suited to special needs, interests, and desires of their citizens." A grant of residual powers would satisfactorily provide these broad powers.

The Illinois Commission on Local Government (1969) recommended granting local governments residual powers, as did the U.S. Advisory Commission on Intergovernmental Relations. Significantly, however, the Commission warned that this home rule concept should be modified sufficiently by the state for it to retain the right to intervene in particular functions within metropolitan areas, such as water supply and sewage disposal, which require an area-wide approach. When endowed with home rule powers, local units are likely to be reluctant to give up their locally controlled services to a regional authority.

Short of granting residual powers, Illinois could follow the constitutions of New Jersey (Art. IV, Sec. 7), Michigan (Art. VII, Sec. 34), and Alaska (Art. X, Sec. 1) which specify that the constitutional and statutory provisions concerning local units shall be liberally construed in their favor.

Local Organization and Guarantees

The 1870 Constitution includes sections which are the result of pressures from local units and officials or outside interests which felt the need for constitutional protection. The first four sections of the counties article were designed to prevent the General Assembly from changing county boundaries without the consent of local residents. The guarantees should be omitted or combined into one concise section. The last five sections of the Counties Article (9-13) were developed by the 1870 Convention to end the abuses of the fee system of compensation for county officials. This can also be omitted from a new article.

The ineligibility of the county sheriff and the county treasurer to succeed themselves, which was added to Section 8 as a part of an 1880 amendment, is found in only a handful of other states. Those who see the need to professionalize the offices of county sheriff and county treasurer urge at the least that this ineligibility be dropped.

Listing of mandatory local offices in the constitution is being questioned because of the limitation it places on legislative efforts to control functions and powers of officials and because it precludes flexibility of organization, places an undue burden on the voter required to make so many choices, hinders the professionalization of local services, and imposes an uncoordinated government on local units. As an alternative, localities themselves could be empowered to determine which offices should exist and whether they should be filled by election or appointment.

The Illinois Commission on Local Government (1969)

supports this proposal while urging "a strong executive authority for county and municipal government." The Commission stresses the need to leave the decision as to the structure of local government in the hands of the legislature.

The Committee for Economic Development recommends the election of policy makers only with the resulting elimination of the "bed-sheet" ballot and either an elective or an appointive county executive. An Illinois Agricultural Association study committee supports an appointive executive. It also proposes consolidation of the functions of some county officers and a corresponding reduction in the number of offices.

The continuing proliferation of local units in Illinois suggests the need for geographic consolidations. The Local Government Commission proposed that the new constitution encourage the reduction of special districts by eliminating the constitutional limitations on the bonding and taxing powers of general governn,

they would be in a better position to finance desired services without creating a new taxing unit) and the consolidation of units too small to effectively perform their functions.

Illinois draws criticism for providing only two possible forms of county government. Almost unanimously, recent recommendations propose that counties be given other choices, such as the manager form, and that these choices be determined by the legislature.

For many years students of government have pointed out that the township is obsolete since the conditions which necessitated the formation of a governmental unit of small size close to the people no longer exist. In Illinois, except for the reference to counties under township organization (Art. X), all provisions concerning townships are statutory. Matters concerning townships should continue under legislative control. It would be a serious mistake for the convention to include any provision concerning townships.

WHY these DIGESTS?

Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly

are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of \$10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

Union League Club of Chicago

65 W. Jackson Blvd.

Chicago, Ill. 60604

