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REPORT OF THE

COMMITTEE

ON

INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972.

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REPORT OF THE COMMITTEE ON INTERGOVERNMENTAL RELATIONS AND LOCAL GOVERNMENT

I. INTRODUCTION

The Committee on Intergovernmental Relations and Local Government has been charged with responsibility for examination of all provisions in the state constitution dealing with the role of, and relationships between, local government units and state government in Minnesota.

The study concentrated on Article XI of the state constitution which presently covers five sections as follows:

Section 1 authorizes the legislature to create, organize, administer, consolidate, divide, or dissolve local government units and their functions. The section further authorizes the legislation to provide for the functions and boundaries of local government units and the selection and qualifications of their officers. The section requires that any changes in county boundaries or a change in the location of a county seat be submitted to the voters affected by such change for their approval or rejection.

Section 2 authorizes the enactment of special legislation provided that the locality affected is named and that local approval is required, unless the legislature provides otherwise. The section further provides that a special law may be modified or superseded by a later home rule charter provision but that the charter provision may itself be superseded by a subsequent special law on the same subject.

Section 3 provides that the legislature may authorize the adoption of home rule charters by local units of government. The section further provides that the legislature may establish the majority required for approval of the charter by the voters of the locality and the majority required by the voters of a city and county adopting a charter which consolidates or seperates the city and county under one local government.

Section 4 authorizes the legislature to provide by law for charter commissions including the method of selection and qualifications of charter commission members. Under this section, the legislature may also establish the mechanics of charter revision and repeal.

Section 5 provides that charters and laws which were in effect at the time of the adoption of the provisions in sections 3 and 4 should remain in effect until amended or repealed in accordance with the above mentioned provisions.

The Committee was fortunate in its assignment of subject matter in that Article XI of the state constitution is relatively new language, approved by the voters of Minnesota in 1958. The article encourages a great deal of local autonomy and allows needed flexibility in fixing ground rules for establishment and revision of local government charters.

As a result, Minnesota's local government article is generally regarded as a progressive, flexible statement of the relationship between state and local government. It is the responsibility of the legislature to utilize this flexible framework in authorizing an appropriate balance between local autonomy and state sovereignty while encouraging the maximum development of intergovernmental cooperation.

The Committee on Intergovernmental Relations and Local Government, then, did not have a major job of revision before it. The changes which are recommended by the committee reflect primarily a clarification of language brought about by the combination of two existing sections and the deletion of unneeded language. In addition, a new section on intergovernmental relations has been recommended to reflect the growing desirability and importance of inter-local and state-local cooperation in solving the challenging problems confronting government at every level.

In arriving at its recommendations, the Committee considered carefully the suggestions of numerous individuals and organizations who submitted letters and oral testimony. To accomodate the oral testimony, the Committee conducted public hearings in Moorhead, St. Paul, and Rochester. The Rochester hearing was held in conjunction with the annual convention of the League of Minnesota Municipalities, giving local government officials from all parts of the state the opportunity to suggest constitutional changes or to comment on present constitutional provisions. The Committee also had the benefit of three research papers prepared by Michael Hatch, a University of Minnesota law student who was assigned the local government subject area.

From its study of Article XI, the testimony, letters, and research papers which were provided to it, the Committee is offering comments on the areas of special legislation and home rule, charter revision, intergovernmental relations and local government organization. It should be noted that the Committee is, in some cases, suggesting constitutional changes, in others

statutory changes, and in still others no change in either constitutional or statutory provisions. In addition, several concerns brought to the attention of the Committee are being referred to other committees of the Constitutional Study Commission with recommendations that appropriate action be taken.

II. HISTORY OF LOCAL GOVERNMENT IN THE MINNESOTA CONSTITUTION

There have been three generations of provisions relating to local government in the Minnesota Constitution, and three different approaches to the problems of local government. Of course, there were also minor amendments from time to time.

The early era, 1857-1896. The original constitution contained relatively detailed provisions relating to county government, e.g. that each new county would contain at least 400 square miles. This language was the original article XI. It remained in the Constitution for over a century, until 1958.

The original Constitution did not provide for city or village government. Instead, all city and village problems were resolved by special acts of the Legislature, creating statutory organizations for the particular communities. In 1892, an amendment prohibited further special legislation.

The Middle era, 1896-1958. In 1896, the people adopted an amendment to Article IV, which provided a limited form of municipal "home rule". This allowed cities and villages to adopt home rule charters in certain cases, and prohibited the Legislature from enacting special legislation for them. The success and the failure of this system is discussed in part III of this report.

During this period, the language of Article XI, dealing with county governments, remained unchanged.

The recent era, 1958-. In 1958, the people adopted a new amendment, It eliminated the old, detailed municipal home rule provisions and substituted simplified language. It also consplidated the provisions of article XI, so that they deal both

with questions of county government and with questions of municipal government.

This 1958 amendment, which was adopted as a single proposition, provides broad power in the Legislature to define units of local government. Its general outline has been discussed in part I of this report.

III. SPECIAL LEGISLATION AND HOME RULE.

The issue. The first substantive area which the Committee faced was the problem of special legislation. Is it possible or desirable for the Legislature to reduce or eliminate the burden of special legislation, applicable to only a single community, which it faces every year?

The problem which the Committee must face is the relationship between the Legislature and the governing bodies of municipalities. If a locality has a special problem, which cannot be solved within the framework of general legislation, there are two ways in which a solution can be reached, through legislative action or through municipal action. The Legislature can enact a special law, which applies only to the specific municipality; this is known as "special legislation". The governing body of the particular municipality can itself enact the measure, if it has "home rule" power and the measure is not contrary to general state laws.

Recent sessions of the Minnesota Legislature have enacted a large quantity of such "special legislation". However, usually the Legislature requres approval of the legislation by the governing body of the municipality before it takes effect.

We report on the question of whether the present constitutional arrangements for such legislation are adequate for modern needs.

Constitutional Language

The present constitutional language is contained in Article XI, sections 2 and 3:

> Special Laws. Sec.2. Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject.
>
> Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. No such charter shall become effective without the approval of the voters of the local government unit affected by such majority as the legislature may prescribed by general law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

General background

The state is the basic unit of constitutional government in the United States. The several states joined together to form the United States. In legal theory, the state constitution distributes the powers of the state to various bodies. It gives legislative powers to the Legislature, executive powers to executive officers, etc. It may grant local governmental powers to local governmental units, or it may grant that local governmental power to the Legislature, to distribute to local governments as it sees fit.

If the state has no constitutional provisions granting municipalities powers, these local governmental units must look to the Legislature for statutes or charters, enabling them to act. The Legislature may grant, alter, and amend these powers, as it sees fit. The Legislature may create municipalities and define their powers by special act, dealing with only one community, or by general law, authorizing all communities of a certain size and description to exercise certain powers.

A state constitution may, however, contain a "home rule" provision. Such a provision permits units of local government to exercise all governmental powers with respect to local problems. Of course, the local laws must yield to general state laws.

The Minnesota constitution contains provisions of both types. According to Article XI, section 3, cities and villages have "home rule" powers, if they enact home rule charters. Such cities and villages can enact any local laws without going to the Legislature. The only exceptions to this rule are that the law must relate to a local purpose and that the city or village cannot enact a local law which contravenes generally applicable state law, Thus, for example, if the Legislature establishes a tax levy limitation which is applicable to all communities in the state, a "home rule" city cannot exceed the levy limitation without permission of the Legislature.

Not every city and village in Minnesota is a "home rule" city. Many operate under so-called "statutory" forms of government. Under this form of government, the local governing body has only those powers delegated to it in the statutory provision.

Any city or village can, however, become a "home rule" city or village in accordance with the provisions of Article XI, section 3.

County and town governments, on the other hand, are "statutory governments" unless the Legislature specifies otherwise. They have only those powers which are delegated to them. They cannot choose to become "home rule" communities unless the Legislature specifically authorized this. Thus, their powers are more strictly limited than those of other municipalities. The same is true of school districts and other special purpose districts which have only that authority which the Legislature has delegated to them.

History

The original state constitution contained no provision relating to municipal home rule. Accordingly, only the Legislature could create municipal governments. Municipal charters (or organic acts) were passed by the Legislature. A large volume of legislative output was the enactment of such laws, although it is clear that not much attention was devoted to it.

The consequences of such legislation were twofold. The legislators in St. Paul, who had to pass the laws, had little knowledge of the circumstances in the local community which occasioned them. The municipal officials on the other hand, could disclaim responsibility for the final decisions and "pass the buck" to the Legislature.

The 1896 amendment permitted cities and villages to adopt "home rule" charters, subject to very detailed limitations. It

also prohibited special legislation which would deal with only one city. The Legislature could only pass laws dealing with designated classes of cities and applying equally to all cities within the class.

While the amendment may have reduced the quantity of requests, the need for special legislative action to deal with the peculiar problems of some communities persisted. Since the 1896 amendment prohibited special legislation which named the municipalities concerned, the Legislature had to seek other devices. It accomplished this by describing, in rather elaborate detail, the characteristics of the community which was the subject of the legislation, but not naming it.

One 1913 law, for example, applied to counties with more than 2,500 square miles, a population in excess of 15,000, but containing no city or village in excess of 3,500 population. This approach had all of the disadvantages of the old special legislation and the additional disadvantage of obscurity. Only an accomplished geographer with a phenomenal memory (or the municipal officials immediately involved) could tell what municipality was meant by certain special legislation.

The consequence was the enactment of the present language of Article XI by constitutional amendment in 1958. This language permits municipal home rule, but also allows the Legislature to enact special legislation where that seem appropriate, naming the particular community or communities affected.

The underlying purpose of the present section 2 is to permit local legislation. The requirement of naming the unit or area involved is to avoid the difficulties of the old system of

legislation by description. The requirement of local ratification was clearly inserted to make home rule the prime resource and special legislation only a secondary route for the solution of local problems. The clear underlying purpose is to place responsibility for local affairs on the local officials.

In implementing the new section 2, the Legislature passed section 645.023 of the Minnesota Statutes. This section exempts all special legislation from the local approval requirement provided in the Constitution. This exemption was necessary to make possible legislation which would apply to large areas, like the Twin Cities area. Although the legislature exempted all special legislation from the requirement of local approval, it has also normally provided in special acts themselves for that local approval requirement to be reinstated. Thus there is a kind of amusing chain of authority:

> The Constitution requires special laws to have local approval unless a general law provides otherwise.
>
> The general law (provided for in the Constitution), reverses this presumption and requires local approval only if the special law so provides.
>
> Most special laws provide that they will not take effect until there is general approval.

Hence, three steps removed, we return to the Constitutionally mandated result.

Basic conclusion.

The Committee accepts the need for home rule and its desirability. Nevertheless, we recognize the occasional need for special legislation, relating to single communities or to groups of communities. The experience of 62 years, from 1896 to 1958, showed that a flat prohibition of special legislation was futile.

In the context of present-day Minnesota we think such a flat prohibition would be even less tenable. We have a state with regional characteristics which may require different legislative solutions. The Legislature must be able to deal with the problems of the metropolitan area, or of the Iron Range, to name only two regions, without pretending that it is legislating for other parts of the state.

While such regional legislation is necessary, there are frequently no local units with governmental powers to enact it. In the absence of such units, the Legislature must act.

There are other situations in which special legislation may also be appropriate. There may be circumstances in which it seems appropriate to exempt a particular municipality from the operation of a general law, because the municipality is already providing the protection or service on a local basis. There may also be other circumstances in which special legislation is justified.

We do not mean to encourage the use of special legislation to resolve local problems which may be resolved by home rule charter amendment. When local means could resolve a problem, local means should be used.

Problems requiring attention:

Since we accept both the desirablity of home rule for cities and villages and the necessity of special legislation in some circumstances, we are content to recommend that the structure of the local government article remain virtually unaltered. There are, however, some specific minor points which require attention.

1. Requirement of local approval. Whenever it is reasonable to require approval of the local governmental units involved, we think that this should be done before special legislation is effective. This avoids both of the perils of special legislation: final decision by those unfamiliar with the situation and the risk of "buck passing" from municipal officials to those removed from local political responsibility.

The requirement of local approval means that the local governing body must accept responsibility for the decisions which it takes. We think this is desirable.

Nevertheless, there are circumstances in which it is unrealistic to ask for local approval. One of these is legislation which applies uniformly to some designated region of the state. In such cases there may be dozens or hundreds of municipalities affected. If any one affected municipality can veto the measure, although the others unanimously approve, it will be exercising a power which is clearly disproportionate to its population.

Over the past several sessions, the Legislature has drawn virtually the same distinction on a case-by-case basis. Special laws which apply to only one municipality normally have explicitly required local approval. Those which apply to an entire area have no such clause and become effective immediately upon passage.

We believe that this desirable result should not be left to the vagaries of the draftsmen of particular bills or to the alertness of individual legislators who have insisted on such provisions in floor amendments. We also believe that a constitutional amendment is not required to reach this desirable result.

The Committee recommends that the Legislature amend Section 645.023 to provide that special laws which apply to one local government unit or to a specified small number of units of government require approval by the respective governing bodies before they take effect, but that special laws with broader regional effect become effective upon passage by the Legislature. A draft bill to accomplish this result is included in an appendix to this report.

2. Enumeration of local government units or counties. The Committee received testimony indicating that the provision of section 2, which requires the enumeration of the local government units or counties which are affected by special legislation, is sometimes a burden. In the 1971 session of the Legislature, at least one bill was proposed which applied to all of the counties outside of the Twin Cities Metropolitan Area. It thus applied to 80 of the 87 counties of the state. Since those 80 counties are contiguous, legislative draftsmen decided that it was necessary to list them in order to comply with the pvovisions of section 2.

Such a result is clearly absurd. The purpose of the language requiring enumeration of the subjects of special legislation was to end the old system of special legislation by population figures, geographic pecularities, etc. It was to simplify, not to over-burden, the process of special legislation.

This purpose would be equally well served by constitutional language which would permit legislation to deal with all of the state except named counties. If a constitutional amendment is necessary to accomplish such a purpose, we recommend that such

an amendment be drafted and submitted to the people. We would recommend such a change as part of a general revision of Article XI; we do not recommend it as a matter requiring immediate or seperate amendment.

3. Circularity of legislation; supremacy of state law. Several persons raised the hypothetical problem of "circular" amendments, which section 2 creates. This section states that a home rule charter amendment may supersede a special law, but also that a special law may supersede a home rule charter amendment. Thus a city could enact some measure as a charter amendment, then the Legislatuare repeal it by a special law, then the city reenact it as a charter amendment, etc.

We know of no instances in which this has happened. Furthermore, there appear to be two reasons why it will not occur. In the first place, general state legislation supersedes all local legislation. Consequently, if the Legislature enacts a general law of statewide application, which incidentally repeals or alters some home rule charter, that general law will prevail and cannot itself be superseded by a later local enactment of the local governing body.

Under the old home rule provisions of Article IV, section 36, (repealed since 1958), this was enforced by the requirement that the charter be "in harmony" with state law.[2] Under the present Constitution, the Attorney General has ruled that the requirement of section 3 that a Charter be in accordance with this constitution and the laws" achieves the same result.[3] Of course, a city ordinance

could not exceed the authority granted in the charter.

If conflict between a special law and a charter amendment is contemplated, we do not believe there is a problem either. The usual requirement of local approval will eliminate the effectiveness of the special law. Even if the special law were to take effect without such consent, the particular affairs of a specific city seem best resolved by local officials, if no general state policy is involved.

Since we do not perceive a problem in this respect, we make no recommendation for change in the state constitution. There will be sufficient opportunity to deal with this problem, if and when it ever arises.

4. County home rule. The Metropolitan Inter-County Council recommended that county governments be given home rule power in the Constitution. Thus the County Boards would be empowered to enact any measures without special legislative authorization. They proposed that this ordinance authority apply to the county as a whole, but that contrary provisions of city or village laws take precedence over such county ordinances.

Under the present constitution, county governments have only those powers delegated to them by the Legislature. They do not have the power to enact "home rule" charters, unless the Legislature specifically authorizes this.

The Model State Constitution and many other state constitutions contain some home-rule power (or authority to pass ordinances) for counties. The California constitution has been cited as a particular example.

The Committee recommends that there be no constitutional amendment on this subject. The Legislature clearly does have the power to authorize counties to adopt home rule charters. If such a result is thought desirable, the Legislature could take action without the delay or expense of submission of the question to the voters.

IV. HOME RULE CHARTERS AND CHARTER COMMISSIONS.

The issue.

Do the present provisions relating to the establishment of Charter Commissions and the enactment and amendment of home rule charters adequately meet the problems of modern Minnesota? Do the detailed provisions require modification?

Background.

When Minnesota became a state in 1858, there was no provision in the state constitution for the exercise of home rule by local units of government. Matters of local concern were handled by the legislature through enactment of special laws. Action on special legislation under the original constitution took up a major portion of the legislature's time which could have been spent in dealing with problems of a statewide nature.

In 1896, Article IV, Section 36 was added to the state constitution, granting the legislature the authority to grant home rule to municipalities and spelling out in great detail involved mechanics for drafting and amending home rule charters. The section was statutory in nature requiring a judicially appointed 15 member "board of freeholders" to draft a proposed charter to

be submitted to the voters under the following conditions:

1) The freeholders were required to be residents of the municipality for at least five years prior to their appointment.

2) The baord was required to submit to the chief magistrate of the district a draft of the proposed charter within 6 months of the board's appointment.

3) The charter was required to be approved by 4/7's of the voters in the next election.

4) If approved by the electorate, the charter was required to be put into effect within 30 days of the election.

5) The legislature was required to establish the limits of the charter.

6) Proposed amendments were required to be published for 30 days in at least three newspapers within the city.

7) Amendments were required to be approved by 3/5's of those voting in the election.

This provision was amended in 1898 and again in 1942 but the detailed and inflexible constitutional requirements for charter drafting and amending remained.

The Minnesota Constitutional Commission of 1948 endorsed a number of changes in this constitutional framework, suggesting that majorities for amending and adopting charters be reduced, that the burdensome newspaper notices be reduced, that the six month limitation on the charter commission to submit a charter be extended to a feasible time limit, that the requirements for filing and publication of the charters be reduced, and that all of the above requirements be established by the legislature in a statutory rather than constitutional format.

Finally, in 1958, the legislature and voters of the state adopted an amendment providing for an entirely new local government article and a repeal of the language in the former Article IV, Section 36. The new article contained the five sections outlined above with Sections 3 and 4 establishing a constitutional framework for adopting and revising home rule charters. That constitutional framework is as follows:

> Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. No such charter shall become effective without the approval of the voters of the local government until affected by such majority as the legislature may prescribe by general law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.
>
> Charter commissions. Sec.4. The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations, the legislature may require that commission members shall be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

The new article greatly increased the flexibility of the legislature in defining the ground rules for the establishment of cities and villages of home rule charters. Accordingly, the legislature provided in MSA 410.01-410.31 for the appointment by the District Court of a 7-15 member Charter Commission whose members

need meet only the requirements of qualified voters. The majority requirement for approving amending home rule charters was reduced from 4/7's and 3/5's, respectively, to 51% of those voting in the election. Charter amendments under Chapter 410 may be approved by the voters after having been proposed by the Charter Commission,[4] may be approved by the voters after having been proposed by the city council and reviewed by the Charter Commission,[5] or may be approved by passage of an ordinance adopted by a unanimous vote of the city council after a public hearing held after two weeks notice.[6] An amendment adopted under the third alternative becomes effective 90 days after passage unless a petition for a referendum is filed within 60 days of the amendment's passage and publication.

The language presently contained in Article XI, Sections 3 and 4, then, gives the legislature needed flexibility in establishing the ground rules for adopting, amending, and repealing home rule charters. The legislature has generally used that flexibility in making home rule an attractive alternative to statutory local government or heavy reliance on special legislation.

Problems requiring attention.

There are, however, several concerns which are reflected in the Committee's recommendations for a new section to Article XI replacing the present language in Sections 3 and 4. The recommended amendment-consolidation of those two sections is as follows:

Home Rule Charters. Sec.3. Any city or village, and any county or other local government unit authorized by law, may adopt a home rule charter for its government. The method of adopting, amending, and repealing home rule charters shall be provided by law. If a charter provides for the consolidation or deperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

The alterations being recommended above fall into four general categories:

1) The Committee recommends deletion of any reference to "freeholders" in Section 4. The present provision provides that the legislature "may" require that the charter commission members be freeholders (property owners). The legislature in Minn.Stat. 410.05, subd.1, has provided that each commission member be a "qualified voter", thus establishing the policy position that property ownership should not be a requirement for holding the office of charter commissioner. The Committee agrees with that policy position and hopes that deletion of reference to freeholders in the Minnesota Constitution will discourage any future attempt to impose such a qualification on a person seeking public office. If recommendation #2 below is carried out and charter commissioners become elective, any requirement on elected officers (which would then include charter commission members) other than the qualifications of voters and a minimum age of 21 would be unconstitutional under Article VII, Section 7 of the Minnesota STate Constitution. Furthermore, there is some doubt that imposing such a qualification on prospective office holders would survive a federal constitutional test. In Kramer v. Union Free School District[7], the U.S.Supreme Court declared a New York statute which required

either property ownership or enrollment of children in public schools as a requirement for voting in a school district election in violation of the equal protection clause of the 14th amendment to the U.S.Constitution.

2) The Committee recommends deletion of any reference to District Court judges in Section 4. The section now provides that the legislature "may provide for their (charter commission members) appointment by judges of the district court." It is the feeling of the Committee that members of the Charter Commission ought to be responsible to the people over whom their deliberations have such great influence. The Committee recommends to the legislature the early amendment of Minn.Stat.410.05 subd.1 to alter the system of selection of Charter Commission members. This might be by popular election or, in some instances, a City Countil might itself act as Charter Commission.

3) The Committee recommends clarification and simplification of language in Sections 3 and 4 which grants the legislature the authority to establish the mechanics of charter adopted, amendment, and repeal. That authority is now present but is muddled by references to possible mechanics which are not required. For example, Section 3 provides that:

> "Home rule charter amendments may be proposed by a charter commission or by a petititon of 5 percent of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in another manner provided by law."

In place of this potential contraditon,(and, at best, a waste of words) the Committee feels a simple grant to the legislature of the authority to establish the method of charter amendment is adequate.

4) The Committee recommends the replacement of the present Sections 3 and 4 "Home Rule Charters" and "Charter Commissions" with a single section entitled "Home Rule Charters".

With implementation of the above constitutional and statutory changes, it is the feeling of the Committee that Minnesota would have a constitutional and statutory framework for establishment, amendment and repeal of home rule charters which would encourage maximum utilization of home rule and minimum reliance on special legislation. Proper utilization of the flexibility found in such a framework would go a long way toward equipping local governments to deal with the challenges and opportunities which now exist and will no doubt continue to exist for generations to come.

V. INTERGOVERNMENTAL RELATIONS

With the complexity of problems facing government at every level, new governmental alignments and strategies are, and will be, required. In many cases, local units of government are already being required to cooperate, pool resources, and combine their efforts in solving the multitude of problems which exist across and between local government boundaries.

While emphasis has been placed on intergovernmental cooperation in our populas metropolitan areas with their jurisdictional overkill and desperate need to interact regardless of geographical boundaries, such cooperation is now being undertaken and planned in an unprecidented manner in the non-metropolitan areas of our state. In many such areas a shrinking tax base, coupled with an increased demand for local government services, has made intergovernmental cooperation critical to local government survival.

Minnesota has a progressive legislative and judicial history of encouraging such cooperation between local units of government and the encouragement of regional approaches to solving problems on a local or regional level. In 1943, the Minnesota legislature enacted the Joint Exercise of Powers Act, Minnesota Statutes 471.59, in response to the suggestion of Minnesota local government leadership including Orville C. Peterson of the League of Minnesota Municipalities. In enacting this legislation, Minnesota became one of a handful of states to provide statutory authorization for the joint exercise of such local government authority. The Minnesota Joint Exercise of Powers Act was and is a general authorization for any local unit of government to exercise any power held in common jointly with any other local unit of government. From 1943 to 1949, the Act was implemented without amendment but then had to be amended in response to a possible interpretation problem which would not have allowed contracting by one municipality for service with another. In 1961, the law was amended as a result of an adverse Attorney General's opinion to specifically authorize one unit of local government to purchase a service from another under a service contract. In 1965, an additional amendment provided that local government units could cooperate with state agencies, the federal government, or political subdivisions of adjoining states. Also in 1965, an amendment to the Act provided that agreeing municipalities could modify charter requirements for representation on a joint board and contract requirements for purchasing.

The Joint Exercise of Powers Act was sustained by the Minnesota Supreme Court in its only challenge in Kaufman v. County of Swift,[8] a 1948 case. Similar statutes have also been upheld in other states.[9]

Utilization of the authority provided in the Joint Exercise of Powers Act has taken the form of informal as well as formal organization through contracts, joint agencies, easements, regional associations of local governments, and non-profit corporations, to name just a few. Financing of the cooperative efforts has been provided through exchanges of personnel, equipment, materils and property; property and sales tax financing and state and federal grants in aid. The cooperation has been undertaken in the conducting of local services as diverse as police and fire protection, civil defense, courts and judges, public works, public buildings and grounds, transportation, health and welfare, libraries, and urban renewal. In all, a 1969 State Planning Agency survey found 240 different types of joint functions being undertaken in Minnesota through 1867 joint agreements.

While nothing in the present Minnesota constitution prevents the exercise of joint power as specifically authorized in MS 471.59, the Committee recommends that any re-writing of the local government article of the Minnesota Constitution include a mandate to the legislature to encourage and facilitate the kind of intergovernmental cooperation required to meet the challenges now facing the local government units.

In such a reqriting, the Committee recommends the addition of a new section to the local government article as follows:

> Intergovernmental relations. Sec.4. The joint or cooperative exercise of powers of local government units with each other or with other agencies of government may be provided by law.

The recommended provision is based in part on a recommended article of the Model State Constitution as follows:

> Section 11.01. Intergovernmental Cooperation. 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.

The states of Illinois and California have also provided within their constitutions similar provisions which include:

California

1) In non-charter counties, the legislature may provide that counties perform municipal functions at the request of the cities within them.

2) In charter counties a county may agree with a city within it to assume and discharge specified municipal functions.

Illinois

1) Local units of government may contract or otherwise associate among themselves to share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law, Participating units of local government may use their credit, revenue and other sources to pay the costs and to service debt related to intergovernmental activities.

2) The state shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

In light of the liberal interpretation of the Joint Exercise of Powers Act by the Minnesota State Supreme Court in Kaufman v.

County of Swift, it might be argued that a provision such as the one which the Committee is recommending is not needed and is superfluous. It is the feeling of the Committee, however, that such a positive declaration of state policy is desirable and that the final clarification of any doubts as to the constitutionality of the Joint Exercise of Powers Act might increase the number of local governments in Minnesota who choose to exercise such joint power. To that end, the addition of such a section on intergovernmental cooperation is not only desirable but necessary.

VI. LOCAL GOVERNMENT IN THE FUTURE

Basic Issue.

In addition to our task of assessing problems of local government in the present, we have also looked at the prospects for local government in Minnesota in the future. Is our Constitution adequate to meet the changing problems which will face local government units in our state? Is there any need for constitutional change?

At our Moorhead hearings, one witness testified that the Minnesota Constitution was the "most forward-looking in the nation" on matters of local government. His basis for this assertion was that the provisions in the Minnesota Constitution are among the most flexible, allowing the Legislature to modify patterns of local government, to meet the changing population and service patterns of the state. We agree with this conclusion and suggest that there is no need for constitutonal modification on this score.

Article XI, section 1, gives the Legislature broad authority to determine the structure of local government. The section provides:

Local government, legislation affecting. SECTION 1. The legislature may provide by law for the creation, organization, administration, consolidation, division, and dissolution of local government units and their functions, for the change of boundaries thereof, for their officers, including qualifications for office, both elective and appointive, and for the transfer of county seats. No county boundary shall be changed or county seat transferred until approved by a majority of the voters of each county affected voting thereon.

This section has been part of the Constitution since 1958. During that period the Legislature has acted reasonably in responding to the changing needs of the community, without making revolutionary or drastic changes in local government organization.

Because, in our view, the structural problems of local government are best left to the Legislature, we do not believe that the Constitution should contain language dealing with probmems of government in the metropolitan area or other forms of regional cooperation, nor should it contain specific language delimiting the powers of various levels of local government. Therefore, we make no recommendations for change on this subject.

Since questions relating to various levels of local government have been brought to our attention, however, we believe that we should comment upon them and describe how they fit within the structure of the present constitutional language.

Townships.

One question brought to our attention was that of township governments. In many areas of the state, townships are a vital part of our governmental structure. The township meeting is one of the few, if not the only, "town meeting" type of government remaining in Minnesota. In other areas, however, township government has apparently fallen into disuse. In these communities, township functions are provided by the counties.

The present township structure is provided by statute. Where it is serving a useful function, it should be retained. If it has become obsolete in some areas, and if town governments wish to dissolve themselves, the Legislature could provide for voluntray dissolution. This problem does not require constitutional attention.

Counties. The only explicit reference to counties is contained in Article XI, section 1, requiring laws changing county boundaries or county seats to be submitted to referendum in the counties involved. We see no reason to change this language. Changes in county lines should not be undertaken without the vote of the people involved. We doubt that the Legislature would attempt such a change, without submitting it to local approval, even if the prohibition were not in the Constitution. However, we see no harm in retaining the language in the Constitution.

The Metropolitan Inter-County Council submitted a suggestion that the language of Article XI, section 3 be amended to provide counties with "home rule" powers, similar to that exercised by cities and villages. The proposal suggested that county ordinances enacted under such powers would have effect except where they were overriden by municipal home rule powers. This would permit county boards to enact ordinances for unincorporated areas.

The Legislature already has ample power, under Article XI, section 3, to grant full or limited home rule power to counties. Since the Legislature has this power by simple act, we see no reason to recommend a constitutional amendment to achieve the same result.

Metropolitan Council: Regional Commission. The Legislature has established the Metropolitan Council as a planning agency for the Twin Cities area. It also serves to coordinate some functions of the Transit Commission and the Sewer Board.

In construing the power and authority of the Metro Council the Minnesota Supreme Court has held that it is neither a unit of local government nor an agency of the state government. Rather, it is something in between. The ability of the Legislature to create such an agency, with limited powers fashined to meet the particular needs of the Twin Cities area, shows the flexibility and adaptability of the present constitutional language.

The Metropolitan Counci or its equivalent is a virtual necessity in modern conditions. Many federal "matching funds" programs require the approval of regional or area planning authorities. If there were no Council, this approval would have to come from some professional planning agency. Furthermore, some programs clearly do require area coordination, if they are to be successful.

The structure of the Metro Council cannot now be established and fixed forever. Its structure, the method of its selection, and even the exact scope of duties assigned to it will change from time to time. These are matters which are best left to the discretion of the Legislature. Legislators who represent the citizens of the Twin Cities area will undoubtedly have a major voice in the determination of these matters.

In other areas of the state, the Legislature has established Regional Development Commissions, to provide for coordination of

planning services and to offer local governments a vehicle for mutual cooperation.[10] These commissions do not have the same powers or composition as the Metropolitan Council. We believe that their statutory basis is adequate for the functions which they serve. We do not believe that they should be written into the Constitution.

The provision of local governmental services is one which will be evolving over the next few decades. With increased population, improvements in communication, and changes in demand for public services, local government cannot remain static. It must adapt to changing requirements of changing times. This will best be accomplished by allowing the Legislature to respond to the particular needs of particular times. A flexible Constitution is best in this regard.

VII. FINANCING LOCAL GOVERNMENT.

The state Constitution contains a number of provisions dealing with the financing of state government. It contains only limited restrictions on the financing of local governments. Since these questions necessarily overlap with the jurisdiction of the Finance Committee, we are identifying problems in this report and suggesting directions for change, but we are not making recommendations to the Commission.

Article IX of the Constitution deals with state finance. Some of its provisions apply to all units of government in the State. Others apply only to the state directly. For example, section 1 applies to all units of government and has a specific provision for municipalities. Section 5, prohibiting internal

improvements, applies only to the state government and not to municipalities.

Mr. Arthur Whitney of Minneapolis submitted to the Committee a memorandum on questions which have arisen in the context of municipal finance. The first of these dealt with Article IX, section 1. The proviso to this section permits special assessments (not based on property values) for "local improvements". These provisions do leave some ambiguity as to the definition of "local improvement" and the basis on which the assessments are to be allocated. We do not see any manner in which this can be improved, without creating further ambiguity in new language inserted. In its reexamination of section 1, however, the Finance Committee may be able to resolve this problem.

Sections 5, 6, and 10 of Article IX may, in some cases, restrict the ability of the state to insure municipal indebtedness. Section 5 prohibits the state from engaging in works of internal improvement; municipalities may do so, but are restricted to those which have a "public purpose". The two categories are not precisely equivalent. Municipal industrial improvement bonds may be for a "public purpose" (increase of employment in the locality), but still be for a prohibited internal improvement. Questions have been raised with respect to two laws relating to municipal finance passed by the 1971 session.[11] While these two cases (and two others relating to purely state agencies) will be resolved by litigation, clarification might assist in future programs and bond issues.

Section 6, subdivision 2, does not authorize the incurring of state indebtedness for municipal purposes. Section 10

specifically prohibits lending the credit of the state, except in certain limited circumstances. Both of these provisions might impede any effort of the state to guarantee municipal indebtedness.

The Committee is generally of the opinion that any widespread use of state power to guarantee municipal indebtedness might be counter-productive. While a debt-ridden municipality may acquire a better rating for its bonds by virtue of a guarantee against the general oblication of the state, the accumulation of many such guarantees will undoubtedly have an effect upon the overall rating for state bonds.

We believe that these provisions deserve attention in the context of the Finance Committee's overall examination of the finance article. We cannot attempt to make an evaluation of them out of that context.

Highway funds.

Municipal and county governments are also beneficiaries from the various Highway Trust Funds, established by Article XVI of the Constitution. These funds are being examined by the Transportation Committee and the Finance Committee. The two groups have held extensive hearings. We offer no recommendation with respect to them.

VIII OTHER ISSUES

In the course of our deliberations, we have encountered a number of other issues which deserve brief mention. In each of these instances, we have determined to make no recommendation.

Mr. David Kennedy, then of the office of Senate Counsel, suggested that we seek to clarify the use of certain terms in the

state constitution. He suggested that words like "local government unit", "town", "village", etc., were ambiguous and might create difficulties. He suggested precision in definition. We have received contrary advice from Mr. Harry Walsh of the Office of the Revisor of Statutes, who has suggested that these terms have received legislative and judicial interpretation over the years. Any attempt at redefinition might create more confusion than assistance. The present language seems to have created no serious difficulties. We recommend no change.

Mr. Kennedy also pointed out other language in the Constitution which has become obsolete or may cause confusion. Article IX, section 15, limiting local aid to railroads appears to be obsolete. It could be removed as part of a general revision of the local government provisions, the finance provisions, or as part of a general amendment removing obsolete provisions.

The Committee also received a suggestion from Mr. Kennedy that a potential conflict between Article VII, section 7, and Article XI, section 1, both relating to qualifications for office, be resolved by clarifying language. Although there is a possibility for conflict presented here, we believe that it is sufficiently remote to postpone its consideration until there is a general revision of Article XI.

IX SUMMARY OF CONCLUSIONS.

The Committee has been fortunate in dealing with an article of the Constitution which has been adopted only recently. We have only a few revisions to suggest. These are mainly technical, clarifying amendments, which do not alter basic policies already expressed in the Constitution.

We believe that the Legislature must continue to have the power to enact special legislation, but it should exercise this power sparingly. No constitutional amendment is clearly indicated on this score, although further study of the problem of enumeration of affected localities and potential circularity of legislation may indicate that amendments are required. The Legislature should amend Minn.Stat.section 645.023 to restore the requirement of local approval on special laws which affect only a few municipalities. The Legislature should consider the question of county home rule.

We recommend simplification and consolidation of sections 3 and 4 of Article XI. This should make charter commissions more responsive to the public. We also recommend legislation to implement these changes.

Although we believe that there is now adequate constitutional foundation for intergovernmental cooperation, through the use of the Joint Powers Act, we recommend amendment of the Constitution to spell out this power. We do this to encourage local governments voluntarily to cooperate to reduce costs and improve services. We also do it to remove the desire of local

government officials to seek the solution of their problems through special acts of the Legislature.

Since we believe that the Constitution provides adequate flexibility for the adaptation of local government in the future, we make no recommendation for change in that respect. We also make no recommendation for change in the finance provisions, leaving that task to the Finance Committee. Finally, we believe that the present definitions of types of municipalities are adequate and should not be changed, unless there is demonstrated need for clarification.

DRAFT LANGUAGE FOR LOCAL GOVERNMENT AMENDMENT

A bill for an act

proposing an amendment to the Minnesota Constitution, Article XI, changing section 3, adding a new section 4 and repealing section 4; providing for the grant and exercise of local government powers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, Article XI, changing section 3, adding a new section 4, and repealing section 4, is proposed to the people. If the amendment is adopted, Article XI, section 4 will be repealed, Article XI, section 3 will read as follows:

Home rule charters. Sec. 3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. ~~No such charter shall become effective without the approval of the voters of the local government unit affected by such majority as the legislature may prescribe by general law.~~ The method of adopting, amending, and repealing home rule charters shall be provided by law. If a charter provides for the consolidation or seperation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

and the new Article XI, section 4 will read as follows:

Intergovernmental Relations. Sec. 4. The joint cooperative exercise of powers of local government units with each other or with other agencies of government may be provided by law.

Sec. 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to change the provisions for the grant and exercise of local government powers?"

Yes _____

No _____ "

NOTES

1. Minn. Laws, 1913, c. 254.

2. State ex rel. Town of Lowell v. City of Crookston, 252 Minn. 526, 91 N.W.rd 81 (1958)

3. Op. Att'y-Gen. No. 58c, July 5, 1968

4. Minn. Stat. sec. 410.12.

5. Minn. Stat. sec. 410.27.

6. Minn. Stat. sec. 410.31.

7. 395 U.S. 612 (1969)

8. 225 Minn. 169 (1948)

9. See In re City and County of San Francisco, 191 Cal. 172, and City of Oakland v. Williams, 103 p.2d 168.

10. Minn. Stat. sec. 462.381 et seq.

11. Laws, 1971 Ex. Sess. c. 20, relating to grants for pollution control, and Laws, 1971 Ex. Sess. c. 46, relating to guaranty of municipal bond issues.

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David J. Kennedy, Assistant Senate Counsel

Arthur Whitney, Minneapolis Attorney

Thornley Wells, Clay County Commissioner

Virgil H. Tonsfeldt, Clay County Commissioner

Lloyd Sunde, Moorhead

Everett Lecy, Moorhead City Clerk

St. Paul Hearing, May 13, 1972

Paul Dow, City Management Association of the Twin Cities

Jim Faber, Director of Public Affairs, Minnesota Association of Commerce and Industry

Ralph Keyes, Executive Secretary, Association of Minnesota Counties

Louis Claeson, Counsel, League of Minnesota Municipalities

Rochester Hearing, June 13, 1972

Bambridge Peterson, Deputy Director, Metropolitan Inter-County Council

John Elwell, Minnesota City Management Association

Gerald Hegstrom, Metropolitan Council

Norm Werner, Coon Rapids City Clerk

David Gilderuse, Minnesota Township Officers Association

Minnie Elman, Minneapolis

Dorothy Jackson, Minneapolis

Gilbert Wolff, Minneapolis

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Robert T. Jorvig, Executive Director, Metropolitan Council, November 24, 1971

William A. Wettergren, Executive Secretary, Minnesota School Boards Association, December 3, 1971

John A. Yngve, Regent, University of Minnesota, November 9, 1971

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Stanley G. Peskar, Assistant Counsel, League of Minnesota Municipalities, November 23, 1971

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David J. Kennedy, Assistant Senate Counsel, December 3, 1971

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Arthur Whitney, Minneapolis, November 22, 1971

Paul Dow, Executive Secretary, Metropolitan League of Municipalities, March 27, 1972

Iver Amondsen, Jr., Two Harbors, March 28, 1972