HOME RULE IN NEVADA

BULLETIN No. 15

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CARSON CITY, NEVADA

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FOREWORD

The Nevada Legislative Counsel Bureau is a fact-finding organization designed to assist legislators, State officers, and citizens in obtaining the facts concerning the government of the State, proposed legislation, and matters vital to the welfare of the people. This office will always be non-partisan and non-political; it will not deal in propaganda, take part in any political campaign, nor endorse or oppose any candidates for public office.

The primary purpose of the Bureau is to assist citizens and officials in obtaining effective State government at a reasonable cost. The plan is to search out facts about government and to render unbiased interpretations of them. Its aim is to cooperate with public officials and to be helpful rather than critical. Your suggestions, comments, and criticisms will greatly aid in accomplishing the object for which we are all working -- the promotion of the welfare of the State of Nevada.

PREFACE

During the 1951 Session of the Nevada Legislature, the Assembly adopted Assembly Resolution No. 17, which memorialized the Legislative Counsel Bureau to study the effect of amending Section 1 of Article VIII of the Constitution of the State of Nevada so as to eliminate special legislative acts relating to municipal corporations. The study quickly revealed the close relationship between this section and other sections of the Constitution containing provisions relating to county and city governments, and it was deemed advisable to study the entire home rule problem in Nevada.

The study begins with a general discourse on the growth of government at all levels, discusses the problem of private, local, and special legislation in Nevada, the legal relations of states and localities, the conditions necessary for effective home rule and the advantages of home rule, and, lastly, a summary and seven recommendations. The study ends with an appendix containing home rule provisions embodied in the "Model State Constitution" as prepared by the National Municipal League.

Local self-government is the keystone of our political institutions. The preservation of this heritage is recognized as essential to the fulfillment of democratic government; unfortunately much that is written on the subject shows a tendency to laud the principle rather than to investigate the practice. The Legislative Counsel Bureau presents this study in an effort to provide legislators and citizens with a factual analysis of the municipal and county home rule provisions existing in the Constitution and statutes of Nevada.

The Legislative Counsel Bureau gratefully acknowledges the valuable assistance of Mr. Russell W. McDonald, Director, Commission for Revision and Compilation of Nevada Laws; Mr. George H. Esser, Jr., Assistant Director, The Institute of Government, University of North Carolina; Mr. Rodney L. Mott, Consultant, American Municipal Association; and the Council of State Governments.

Copies of this study may be obtained free of charge from the Nevada Legislative Counsel Bureau, Carson City, Nevada.

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CHAPTER I

THE GROWTH OF GOVERNMENT

Activities and expenditures of state and local governments have grown rapidly in recent years. Studies made by the Council of State Governments reveal that the expenditures of states and localities has increased 736% from 1903 to 1940. without adjustments being made for variations in the purchasing power of the dollar. The growth and expenditures of the states over this period was more spectacular than that of localities. The expenditures of local government increased 522%. while state expenditures jumped 1700%.

The business of states and localities is, in fact, one of the nation's largest enterprises. In terms of tax collections. it was larger than the more highly publicized federal government for each of the 20 years preceding the war. From the provision of a few simple services. the work of states and localities has expanded into evermore diverse fields. The process of urban invasion has accelerated this trend, multiplying costs and services of government much faster than the population increase. The major functions of states and localities are in the fields of education, public welfare, highway construction and maintenance, and protection of persons and property.

Impact of Growth on Individual Units

The increase in the scope and complexity of functions has had a striking effect on individual units of government. The city of Detroit, for example, carried on 24 activities in 1824; by 1942 this number had grown to 396 activities, an increase of more than 1500%. The number of functions almost tripled between 1900 and 1940. Among the 247 activities added since 1900 are the serving of school lunches, smoke inspection and abatement, establishment and maintenance of an aquarium, a conservatory, a fine arts library. playgrounds, a tuberculosis clinic, a police training school, high school evening classes. technical high school education, a city college and junior colleges. a clinic and school for epileptic children, a pre-natal nursing program, an ambulance service, and a camp for tubercular children.

Other cities have experienced a similar growth. At least since 1915, however, city activities, whether measured in terms of expenditures or of new functions, have not multiplied as rapidly as those of the states. The growth of cities has been largely a history of the expansion and diversification of types of functions which first came into existence before 1915. This growth has been especially marked in education and recreation, though even the expansion in city educational activities has not been as rapid as the expansion of highway and welfare programs in the states.

Though centralization in some states (as in programs for rural construction in North Carolina and Virginia) has completely relieved counties of some functions. counties have maintained an important place for themselves in most states. Their growth has not been as large or as consistent as the growth of cities and states. Nevertheless, county functions and expenditures have increased materially, and most markedly in fields stimulated by state and federal funds.

Surveys over long periods have been made in two counties in the United States. The activities of Milwaukee County Wisconsin. increased from 35 in 1835 to approximately 200 in 1946, with the largest increases occurring since 1900. A similar and apparently greater increase of activities has been recorded in Los Angeles County. California which more than doubled the number of its functions between 1914 and 1934.

Townships stand as the single type of local government whose importance has generally decreased during the last decades. Deficient in population, area, and wealth, townships have proved themselves inefficient units of government for the performance of most major functions. In many states outside of New England, responsibility for the most important township activities (road construction and maintenance, public welfare, and public health) has been transferred from townships to counties and state government. At the same time, taxable resources of townships have been depleted by the incorporation of small municipalities. In Oklahoma, townships were completely eliminated during the depression.

In Nevada. it appears that cities and counties have gradually expanded their functions in varying degrees, but roughly in accordance with the national trend. As an example, the city of Reno carried on 19 activities in 1909; by 1950 this number had grown to 66 activities. an increase of more than 247%. Fifty-six townships cover the seventeen counties of Nevada, but their functions have always been limited to being the areas of authority of justices of the peace and constables, the only township officers. In some cases single townships have areas covering an entire county. Justices of the peace are county officers in all respects except the area of their authority, and even that

is county-wide in most counties that have single townships. While there are still a few constables, in most cases the sheriffs are also ex officio constables.

Except during war periods, the growth of state governments has been more rapid and more consistent than the growth of either the federal government or the local units. Increasing federal influence in state programs has not resulted in the transfer of state functions to federal administration. On the contrary, the expansion of federal interests and the provision of federal funds to support those interests have resulted in enlargement of state activities. This has been especially true in the development of programs for highways, public welfare, vocational education, agricultural extension work, and conservation. In addition to new functions acquired as the result of federal stimulation, state governments have enlarged their activities by assuming new responsibilities for functions once considered purely local in character and by expanding traditional state services in response to popular demand.

These factors have affected every state to some degree. In California, for example, the number of functions of the state government more than tripled between 1900 and 1936, reaching a total of 367 in the latter year. From 1925 to 1935 alone "116 state functions were legislated into existence." Between 1850 and 1860 no legislation was passed in California regulating business, the establishment of professional standards, or the maintenance of parks, waterways, highways, or facilities for irrigation; between 1925 and 1935, in marked contrast, new legislation was enacted in each one of these categories, and, in fact, in "every major aspect of state activity." In 1950, the State of Nevada spent more money in six working days than the total operating cost of the government in 1900.

The Necessity or Reorganization

There is a marked contrast between the rapid expansion of governmental activities and costs on the one hand, and the relatively slight changes in organization on the other. New functions are welcomed, but corresponding changes in the direction of unity, coordination, capacity, and competence of political power are either resisted or tardily and reluctantly accepted. The lag between functions and organization creates problems for all governments. These problems are especially acute for inter-governmental relations, whether they be local-state, state-national, or national-international. Problems of reorganization in the field of inter-level government are complicated by special interests at each level, by competing sets of officials, and by the bias of each group in favor of its own powers and programs.

Significant reorganizations have taken place in the last decades on federal, state, and local levels. Within the federal government there has been the report of the President's Committee on Administrative Management, and subsequent changes within the executive branch of the government. Within the states, the position of governors has been strengthened, and state administrative systems have been simplified and integrated. Within localities there have been the development and growth of city-manager governments.

In the search for efficiency, however, reorganization of state-local relations has fallen behind other areas of government. These relations in most states have grown haphazardly and without planning. They have not kept pace with fundamental changes in technology and have not been geared to meet the ever-increasing load of state-local activities. States continue in most instances to regulate local governments through the awkward and inefficient process of detailed legislation. Where administrative supervision is undertaken, it is frequently limited in scope and not organized to achieve its full usefulness. Problems of state-local fiscal systems have not been met with the comprehensive programs they demand. Local units of government have been allowed to multiply until their very number has impeded their efficiency, and inadequate steps have been taken to meet the grave, new problems of metropolitan areas.

State and local officials are thus confronted with a dual set of factors. On the one hand, there is the astonishing growth in state-local activities and the certainty that this growth will continue. On the other hand, there is the fact that necessary changes in systems of state-local relations have not taken place. These combined factors show that study and reorganization of state-local relations is of prime importance.

The Responsibility of State Governments

The business of state and local governments is a joint business. Virtually every major function these governments perform is a shared function. Localities are dependent upon states for enabling legislation, the provision of certain funds, the establishment of standards, and many other services. States are dependent upon localities for the efficient operation of a multitude of functions. The two levels of government have a complete mutuality of interests in serving the same population, and they have a common responsibility for formulating and administering programs to achieve great public objectives.

It is clear, nevertheless, that primary responsibility for a well ordered system of state-local relations rests with the state governments. This responsibility springs from two facts: first, except for constitutional guarantees, the

states are the legal masters of local governments; second, the states are superior to localities in their ability to raise revenues. This dual dominance of states - in law and finances - is an incontrovertible fact. It places a heavy obligation upon the states to create an orderly and effective system of state-local relations.

No plan of reorganization can succeed, however, without the full cooperation of local officials and the legislature. The strength of both states and localities depends upon the achievement of an effective system of joint operation. Reorganization should therefore result from joint planning and joint participation.

CHAPTER II

THE PROBLEM OF PRIVATE, LOCAL, AND SPECIAL LEGISLATION IN NEVADA

Provisions of Nevada's Constitution

Section 20 of Article IV of the Constitution of the State of Nevada reads as follows:

> "Sec. 20. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: regulating the jurisdiction and duties of justices of the peace and of constables, and fixing their compensation; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; vacating roads, town plots, streets, alleys and public squares; summoning and empanelling grand and petit juries and providing for their compensation; regulating county and township business; regulating the election of county and township officers; for the assessment and collection of taxes for state, county, and township purposes; providing for opening and conducting elections of state, county, or township officers, and designating the places of voting; providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities; giving effect to invalid deeds, wills, or other instruments; refunding money paid into the state treasury, or into the treasury of any county; releasing the indebtedness, liability or obligation of any corporation, association, or person to the state, or to any county, town or city of this state; but nothing in this section shall be construed to deny or restrict the power of the legislature to establish and regulate the compensation and fees of county officers, to authorize and empower the boards of county commissioners of the various counties of the state to establish and regulate the compensation and fees of township officers in their respective counties, to establish and regulate the rates of freight, passage, toll, and charges of railroads, toll roads, ditch, flume, and tunnel companies incorporated under the laws of this state or doing business therein."

This section as amended in 1889 and 1926 is a considerable amplification of the original. In 1889, the wording was added which prohibited the legislature from passing local or special laws on deeds, wills, or other instruments; on refunding money paid into public treasuries; on the releasing of indebtedness and liabilities to the state or local political subdivisions. Also, at this time, the wording was added which allowed the legislature to establish and regulate the compensation and fees of county and township officers, and to establish rates for various public utilities. The 1926 amendments eliminated the power of the legislature to establish the compensation and fees of township officers, and gave the power to boards of county commissioners.

There have been a goodly number of decisions by the Supreme Court of the State of Nevada on the meaning of this section. It has been held that a statute prescribing the manner in which the payment of an indebtedness of a county shall be conducted is a law regulating county business. The words "public or general" on the one hand and "private or special" on the other, as applied to statutes, are convertible terms so that the word "special" when used is as much the antithesis of "public" as it is of "general." A statute, to be general, must be operative alike upon all persons similarly situated; but it need not be applicable to all counties in the state. The above statutes are applicable to all persons sustaining the relation of creditors to Esmeralda County, and are therefore general as contradistinguished from special laws. As in expounding a constitutional provision, such construction should be employed as will prevent any clause, sentence, or word from being superfluous, void, or insignificant; full and distinct meaning should be given to each of the words "local" and "special" in the constitutional provision against "local and special laws regulating county business." A statute may be special and not local, or it may be local and not special. A local law is one relating, belonging or confined to a particular place as distinguished from general, personal, or transitory. The said statutes, as they embrace all persons holding a certain species of property irrespective of locality, operate as to such property as well without as within Esmeralda County, and are not local laws. Youngs v. Hall, 9 Nev. 212.

A law which applies only to an individual or to a number of individuals selected out of the class to which they belong, is a special law. State v. California Mining Co., 15 Nev. 234. The "act prescribing an additional penalty for the non-payment of taxes in certain cases after suit," is constitutional, it being a general law imposing the same burden upon all persons similarly situated and belonging to the same class. State v. Consolidated Virginia Mining Co., 16 Nev. 432.

The legislature has the power to make a classification of counties, based upon a voting population. The validity of such an act is not dependent upon the number of counties coming within the designated class. If in its operation and effect the act is so framed as to apply in the future to all counties coming within the class mentioned and is based upon real and substantial grounds, not illusory or odious in their character, it is neither local or special within the meaning of this section. An act to restrict gaming and providing that certain games shall not be carried on in any room of the first floor or story of any building, nor a license issued therefor in any county where more than 1,500 votes were cast at the general election last preceding the application, is not in violation of this section, although at the time the application was made there was only one county in the state to which the law could apply. State v. Donovan, 20 Nev. 75.

An act of the legislature regulating the fees and compensation of the officers of Ormsby County is not unconstitutional as being local or special legislation. The Comstock Mill and Mining Co. v. Allen, 21 Nev. 325.

Section 20 was intended to prohibit the legislature from passing any local or special law in any of the cases enumerated in Section 20 and in all other cases where a general law would be applicable, that is, adapted to the wants of the people suitable to the just purposes of legislation or to effect the object sought to be accomplished. These provisions recognize the fact that cases would arise in the ordinary course of legislation requiring local or special laws to be passed, cases where a general law might be applicable to the general subject but not applicable to the particular case. A general law should always be construed to be "applicable" in the constitutional sense, where the entire people of the state have an interest in the subject, such as regulating interest, the statutes of frauds and limitations, but where only a portion of the people are affected, as in locating a county seat, it would depend upon the facts and circumstances of each particular case whether such a law would be applicable. Where a local or special law has been passed in reference to a matter affecting only a portion of the people, it will be presumed to be valid until facts are presented showing beyond any reasonable doubt that a general law is applicable. The mere fact that a general law has been passed providing for the removal of county seats is not proof that it is applicable to a particular case; and if a special act be passed for the particular case, the presumption of the applicability of the general law is overcome by the presumption in favor of the special act, that the general act was not applicable in that case. Evans v. Job, 8 Nev. 322.

As the legislature has no authority to enact a local or a special law when a general law can be made applicable, it is competent for the courts, in case of a special or a local act properly presented to them, to inquire whether or not a general law could have been made applicable. The decision as to whether a special or local law can be passed, or in other words, whether or not a general law can be made applicable, is primarily in the legislature, and its decision, though subject to review by the courts, will be presumptively correct. Where, notwithstanding the existence of a general statute in relation to the removal of county seats, the legislature passed a special act in reference to the removal of a particular county seat, it was held that the presumption was that the general act was not and could not be made applicable. Hess v. Pegg, 7 Nev. 23.

Under the constitutional provision against the passage of local or special laws regulating county or township business, it was held that a special act, auditing and allowing a pre-existing claim against a county, appointing the mode and manner of its payment, directing the drawing of county warrants and fixing the rate of interest they should bear, was unconstitutional. The policy of the constitution is local management of local affairs, regulated by general laws of uniform application throughout the state. Williams v. Biddleman, 7 Nev. 68.

An act authorizing and directing the county commissioners of Elko County to allow a claim in favor of the plaintiff for injury and authorizing payment thereof was held invalid as a special law regulating county business, and in violation of Section 20. McDermott v. County Commissioners, 48 Nev. 93.

An act of the legislature entitled "An act to incorporate Storey County and to provide for the government thereof," is a local and special act regulating county business and consequently in conflict with Section 20. Schweiss v. First Judicial District Court, 23 Nev. 226.

An act creating the County of White Pine and providing for its organization is not in conflict with Section 20. A "local" act is one operating over a particular locality instead of over the whole territory of the state; a "special" act is one operating upon one or a portion of a class instead of upon all of a class. The above act as it refers to only one new county and its organization, instead of to all new counties, and to those only of a class or a whole, occupying or proposing to occupy such county, is a local and special act. The word "elected" in its ordinary signification carries with it the idea of a vote, generally popular, but sometimes more restricted, and cannot be held the synonym of any other mode of filling a position. This act does not regulate the election of county and township officers, and is therefore not repugnant to Section 20. State v. Erwin, 5 Nev. 111.

So far as Section 20 forbids local or special laws "for the assessment and collection of taxes," it was intended simply to inhibit local or special laws respecting or regulating the manner or mode of assessing and collecting taxes, and does not prevent the legislature from authorizing or directing county commissioners from levying a special tax by the passage of a local law. Gibson v. Mason 5 Nev. 284.

An act to discontinue litigation touching inequitable claims for taxes and penalties is a special law and is unconstitutional. State v. Consolidated Virginia Mining Co., 16 Nev. 432.

An act regulating the compensation of county officers is not in violation of Section 20. It is within the power of the legislature to pass local or special laws regulating the compensation of county officers. State v. Fogus. 19 Nev. 247.

The limitations of Section 20 apply to taxes and not to licenses, leaving the legislature to regulate the latter with a free hand where they do not encroach and discriminate in relation to taxes as properly and ordinarily understood, and without other restraint except the responsibility of the legislators to their constituents. Wallace v. Mayer of Reno. 27 Nev. 71.

Where the County of White Pine was created out of a portion of the County of Lander, and certain records and suits relating to property in the new county were directed by legislative act to be transferred from the county seat of Lander County to the county seat of White Pine County, and to be tried in the district court of the Eighth instead of the Sixth Judicial District, it was held that such act was not an act changing venue within the meaning of the constitutional provision against a legislative change of venue. The act is not an act regulating the practice of courts of justice. State v. McKinney, 5 Nev. 194.

Section 21 of Article IV of the Constitution of the State of Nevada reads as follows:

"Sec. 21. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state."

Section 21 has never been amended, but there are a number of court decisions interpreting this wording. A general law to be "applicable," in the sense in which the word is used in this section, must answer the just purpose of legislation, that is, best subserve the interests of the people of the state, or such class or portion as the particular legislation is intended to affeet. State v. Erwin, 5 Nev. 111.

A statute providing for the admission to probate of the unattested will of Henry Sticknoth, was held not objectionable as a special act in case where a general law could be made applicable. In re Sticknoth, 7 Nev. 224.

An act incorporating Carson City is not in violation of the provisions of this section. Evans v. Job, 8 Nev. 323.

It is the duty of the legislature to regulate the election of township and county officers by general laws. State v. Arrington, 18 Nev. 418.

An act providing an eight-hour day for working men in mines, smelters and mills for the reduction of ores, was not void, nor in conflict with Section 21. Ex parte Boyce, 27 Nev. 209.

The clause of an act providing for an attorney's fee in favor of the party recovering damages against one unlawfully herding or grazing stock on his hand is a proper police regulation and is constitutional. Pyramid Land and Stock Co. v. Pierce, 30 Nev. 237.

An act providing that the commissioners of Humboldt County should provide that persons charged with or convicted of a misdemeanor in the western townships of said county may be imprisoned in the branch county jail of said county instead of the county jail, was held to be unconstitutional, as being a special act upon a subject that could be covered by a general act. Wolf v. Humboldt County. 32 Nev. 174.

An act of the legislature provided that after May 1, 1911, the county commissioners of Lyon County should remove the offices and archives and other movable property from Dayton to Yerington. The general act of 1877 provides for the removal of county seats by a majority of the voters at an election called on petition of three-fifths of the taxpayers who are electors. Prior to the last general election the court house at Dayton was destroyed by fire. It was held that the special act was justified on the ground that an emergency existed, calling for prompt action. If a special act be passed for a particular case, the presumption of the applicability of a general law is overcome by the presumption in favor of the special act that the general act was not applicable. The legislature in the first instance is the judge as to whether a law on any subject not enumerated in the Constitution can be made general and applicable to the whole state, and the judgement of the legislature as to whether a general law is applicable or special, or local laws are required regarding subjects not so enumerated, is presumed to be correct, but is subject to review by the courts. In locating a county seat, it will depend upon the facts and circumstances of each case whether a special law is applicable. Quilici v. Strosnider, 34 Nev. 9

A statute authorizing Elko County to issue bonds for, and to construct and equip a high school building in the town of Wells, is not a special law violating Section 21. Dotta v. Elko County Board of Education, 38 Nev. 1.

Section 22 of Article IV of the Constitution of the State of Nevada reads as follows:

"Sec. 22. Provision may be made by general law for bringing suit against the state as to all liabilities originating after the adoption of this constitution."

Suit against a state by citizens of another state must be brought in the courts of the defendant state, inasmuch as the eleventh amendment to the federal constitution provides that the federal courts have no jurisdiction in such cases. In any state, suits against it will be thrown out unless provision has been made by statute in such state for such action. Nevada has made such provision, and consequently suit may be brought against it by its own citizens or by citizens of another state. However, permission extends only to actions arising out of contractual obligations;

there is no tort liability. A tort is an act done without right by which a person suffers injury. In the case of a tort liability, the only recourse is to the legislature.

Section 25 of Article IV of the Constitution of the State of Nevada reads as follows:

> "Sec. 25. The legislature shall establish a system of county and township government, which shall be uniform throughout the state."

This section has never been amended, and there are a number of court decisions interpreting its provisions. A law, though not applicable to all counties in the state, may be of a general nature by reason of the fact that localities and objects upon which it acts are distinguishable from others by a peculiar relation to the legislative purpose. Singleton v. Eureka County, 22 Nev. 91.

An act entitled "An act to incorporate Storey County and provide for the government thereof," is void because it is in conflict with Section 25 in many particulars. Schweiss v. First Judicial District Court, 23 Nev. 226.

The legislature is required to make a uniform system of county government and to provide for a uniform system of public schools. In carrying out these provisions, it may abolish any county offices other than those specially created by the Constitution. State v. Pilford, 1 Nev. 240.

The legislature may classify the counties by a voting population at the general election, and give to each county polling 4,000 or more votes five commissioners, and to all other counties three. State v. Woodbury, 18 Nev. 338.

An act fixing the salaries of county officers in certain counties is illusory because some of its provisions are applicable only to Washoe County and others only to Esmeralda County, and the basis of the classification is unconstitutional, because in its practical operation it is applicable only to two counties and can never affect any other county. In order to observe the uniformity required by this section, the classification of counties must be based upon reasonable and actual differences; the legislation must be appropriate to the classification, and embrace all within the class. The requirement that the systems of county government shall be uniform, is not considered to impart universality to the operation of the law. State v. Boyd, 19 Nev. 43.

While the office of township constable, not being a constitutional office, may be abolished from the entire system of township government, abolishment thereof from a single township contravenes the above section guaranteeing a uniform system of township government throughout the state. Moore v. Humboldt County, 46 Nev. 220.

Section 32 of Article IV of the Constitution of the State of Nevada reads as follows:

> "Sec. 32. The legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: county clerks, county recorders, auditors, sheriffs, district attorneys, county surveyors, public administrators, and superintendents of schools. The legislature shall provide for their election by the people, and fix by law their duties and compensation. County clerks shall be ex officio clerks of the courts of record and of the boards of county commissioners in and for their respective counties.

Section 32 was amended in 1889, the principal change being the elimination of a reference to the Clerk of the Supreme Court.

Section 36 of Article IV of the Constitution of the State of Nevada reads as follows:

> "Sec. 36. The legislature shall not abolish any county unless the qualified voters of the county affected shall at a general or special election first approve such proposed abolishment by a majority of all the voters voting at such election. The legislature shall provide by law the method of initiating and conducting such election."

Section 36 was added to the Constitution in 1940, and was precipitated by an attempt during the 1937 Session of the Legislature to abolish certain counties.

Section 1 of Article VIII of the Constitution of the State of Nevada reads as follows:

> "Section 1. The legislature shall pass no special act in any manner relating to corporpowers except for municipal purposes; but corporations may be formed under general laws, and all such laws may, from time to time, be altered or repealed."

Section 1 of Article VIII has never been amended. This section clearly recognizes the authority of the legislature to create municipal corporations by special enactment. This interpretation is not inconsistent with the provisions of Section 8 of Article VIII. City of Virginia v. Chollar-Potosi Gold and Silver Mining Company, 2 Nev. 86; State v. Swift, 11 Nev. 129.

This section seems to reserve to the legislature the power to pass special laws in regard to municipal corporations; that is, to create them or, at least, to confer special and additional powers after they are in existence. The expression "in any manner relating to corporate powers," is a rather ambiguous phrase, but we think the framers of the Constitution meant by that language to prohibit the formation of corporations by special acts. The subsequent language "but incorporations may be formed under general laws," shows that was the meaning intended to be conveyed. Then, to use more appropriate language, the section would read in this way:

"The legislature shall pass general laws for the formation of corporations; but no corporation (except corporations for municipal purposes) shall be created by special act." State v. Dayton Road, etc. 10 Nev. 155.

The above provision against the passage of special acts conferring corporate powers applies in strictness only to purely private corporations. In re Scott, 53 Nev. 24.

Section 8 of Article V111 of the Constitution of the State of Nevada reads as follows:

"Sec. 8. The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town, to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town."

Section 8 of Article V111 was amended in 1924 by the addition of the wording beginning with the words, "provided, however," and is a home rule provision that is not mandatory; the authorized power granted to the legislature may be exercised by the legislature if it so desires. Referring to the procuring of supplies of water, it has been held that where exclusive control over a matter is given to a municipality by the Constitution, the municipality is exempt from any control over such matter by subsequent legislative act. State ex re. Owens v. Doxie, 55 Nev. 186.

General Statutes Affecting Cities and Towns

There are a goodly number of general statutes in Nevada that have to do with the government and management of cities and towns. There are eleven that have to do with incorporated cities, ten that have to do with unincorporated towns, and five that have to do with both incorporated cities and unincorporated towns. A framework of home rule is provided for both incorporated and unincorporated cities and towns, but it appears that the provisions are not sufficiently broad and flexible to meet the needs of many Nevada cities and towns; new modern, streamlined, general statutes may be necessary in order to provide real home rule. An examination of Section 1100, Nevada Compiled Laws 1929, which is the first section on a general statute providing for a mayor-council type of government for incorporated cities, reveals the following wording:

"Sec. 1100. The right of home rule and self government is hereby granted to the people of any city or town incorporated under the provisions of this act."

Council-Manager Type of Government for Incorporated Cities

What is the nature of the general framework provided by law for the government of incorporated cities and towns? Whenever a majority of the qualified electors who are taxpayers within the limits of the city or town proposed to be incorporated, as shown by the last official registration list and assessment role, shall desire to be organized into an incorporated city or town, they may apply in writing to the district court of the proper county, which application shall describe the territory to be embraced in such city or incorporated town. When the application is so made, the court is required to enter a decree declaring the city or town duly incorporated, and shall designate its classification, and shall appoint five commissioners who shall call an election for the purpose of choosing officers of the city. The commissioners are required to make a report to the court, and thereafter the conduct and holding of all general and special municipal elections are under the control of the city council, and they are required to provide for the holding of elections by ordinance.

The clerk of the court is required to file with the secretary of state duly certified copies of all papers relating to the incorporation of the city, and the Secretary of State is required to publish the incorporation of the city for a period of one week in some newspaper of general circulation. Thereafter, the incorporation of the city is declared to be complete.

Municipal incorporations are divided into three classes. Those cities having 20,000 or more inhabitants are known as cities of the first class, those having more than 5,000 and less than 20,000 inhabitants are known as cities of the second class, and all other cities are known as cities of the third class. Whenever a city of the second class attains the population of 20,000 or more, or any city of the third class attains a population of 5,000 or more, such fact is certified to the governor by the mayor, and the governor is required to declare by public proclamation such city to be of the first or second class, as the case may be. An authenticated copy of the proclamation is required to be filed in the office of the secretary of state.

The law states generally that such incorporated cities may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal, have perpetual succession, and exercise all the powers conferred by law.

Each incorporated city of the first class is divided into eight municipal wards, each city of the second class is divided into five municipal wards, and each city of the third class is divided into three municipal wards. The boundaries of the wards may be changed and prescribed by ordinance of the city council. The municipal government is vested in a mayor and city council, and in cities of the first class the city council is composed of nine councilmen, one from each ward and one elected by the electors of the city at large. In cities of the second class there are five councilmen, with one from each ward, and in cities of the third class there are three councilmen, with one from each ward. The mayor is required to exercise a careful supervision over the general affairs of the city, and is charged with many duties and powers including the right of veto upon all matters passed by council. The council may override the veto with the required statutory majority.

The city council is required to prescribe by ordinance the time and place of holding their meetings, but there must be at least one meeting each month. Special meetings may be held on the call of the mayor or a majority of the council. The council's sessions and proceedings must be open to the public. It is required to keep a journal of its proceedings, the yeas and nays shall be taken upon the passage of all ordinances, and all propositions to create any liability against the city, or to grant, deny, increase, decrease, abolish or revoke licenses, and in all other cases at the request of any member or of the mayor the yeas and nays are required to be entered upon the journal. The concurrence of a majority of the members elected to the council is necessary in order to pass any such ordinance or proposition. No ordinance may be passed except by bill.

In this law, a very long section sets forth several hundred powers and duties of the city council. As will be pointed out later, there are a goodly number of additional powers and duties given to the council by separate general statutes. The council may provide by ordinance the manner and details necessary for the full exercise of the powers conferred upon it. It may even provide for the formation of a chain gang for persons convicted of offenses in violation of the ordinances of the city.

In addition to the mayor and city council, there may be elected in each city of the first or second class a city clerk, a city treasurer, a judge of the municipal court, and a city attorney. In cities of the third class, the mayor, by and with the advice and consent of the city council, may appoint any or all such officers as may be deemed expedient, and such appointive officers shall hold their respective offices at the pleasure of the mayor and city council. However, the law provides that in all classes of cities, the mayor, by and with the advice and consent of the council, may appoint all such officers and agents as may be provided for by law or ordinance. The compensation of all officers may be fixed by ordinance, and their duties, powers, and privileges are required to be defined by the city council. General provisions defining the powers and duties of the aforementioned city officers are in the law.

At the time prescribed by law for levying taxes for state and county purposes, the council is required to levy an annual tax not exceeding three percent upon the assessed value of all real estate and personal property within the city made taxable by law. The council is given full power to enact all ordinances necessary to carry the revenue laws of the city into effect, and to fix and determine the powers and duties of all officers in relation thereto. Whenever, in the opinion of the city council, the benefits are special rather than general or public, the cost and expense of any local improvements may be defrayed in whole or in part by special assessment upon the lands abutting upon and adjacent to or otherwise benefitted by such improvement. Special assessments may be provided for by ordinance, but there is considerable law covering the procedure in this matter.

The law provides that any city organized under a special charter may surrender such charter and become organized under this general act. A petition signed by fifteen percent of the qualified electors of the city must be presented to the legislative body of the city, there must be a special election, and if a majority of the votes are in favor of the change, the city is deemed to have surrendered its charter and to be organized under this general law.

The city council has the power by ordinance to diminish the established corporate limits or boundaries of the city, to detach from the city any area or territory within the corporate limits, and to annex new territory.

This general statute then goes on to provide for the disincorporation of cities. Whenever one-fourth of the legal voters of any city existing either under general or special law shall petition the district court for disincorporation, the question is required to be submitted to the voters at the next municipal election, and if the district court finds that a majority of the legal votes are cast for disincorporation, then the court is required to enter a judgement disincorporating the city, and upon the entry of the judgement its corporate powers are ended. An old 1865 statute provides that the board of commissioners of each county shall have the power to disincorporate any city or town which may have been incorporated under the laws of the state upon the petition of a majority of the legal voters residing within the city. The board may appoint three competent persons to act as trustees for the corporation so dissolved, with power to prosecute and defend suits, and make settlements.

Other General Statutes Affecting Incorporated Cities

A 1927 statute, known as Sec. 1257, Nevada Compiled Laws 1929, and amended in 1943, reads as follows:

"Sec. 1257. Whenever it is desired to amend the charter of any incorporated city or town within the State of Nevada, such amendment or amendments may be effected in any one of the following methods:

(1) By an act of the legislature.

(2) Upon the filing of a verified petition bearing the signatures of not less than 60% of the registered voters**** it shall be the duty of the governing body of such city or town to adopt such amendments by resolution without further proceeding.

(3) Upon filing with the governing body of such city or town a verified petition bearing the signatures of not less than 30% of the registered voters of the city or town, a special election shall be called*** or upon the filing with the governing body of such city or town a verified petition bearing the signatures of not less than 10% of the registered voters of the city or town, the said amendment or amendments proposed in said petition shall be placed upon the ballot at the next municipal election.*** The governing body of such city or town shall call a special election, or provide for the voting upon such proposed amendment or amendments at the next municipal election, for the aforesaid purpose.***

The governing boards of incorporated cities may reconvey lands donated for public use. Sec. 1264, 1265, Nevada Compiled Laws 1929.

The city council or governing body of any incorporated city or town may, by ordinance, create a city planning commission. Sec. 1267-1273, Nevada Compiled Laws 1929.

The city council of incorporated cities may restrict the height, etc. of buildings in certain zones. Sec. 1274-1280, Nevada Compiled Laws 1929.

The owners of platted land in an incorporated city may make application to the city council for the vacation of the portions of plats owned by them, together with portions of streets, alleys, and public ways, for public school, high school, or other public improvements. Sec. 1372-1374, Nevada Compiled Laws 1929.

Any incorporated town or city, whether incorporated under a general or special act, may, by ordinance, issue street improvement bonds, but the provisions of the city charter must be complied with. Sec. 1382-1389, Nevada Compiled Laws 1929.

In any suit commenced in any incorporated city or town of this state for the collection of delinquent taxes, no cost shall be charged against or collected from such city or town. Sec. 1396, Nevada Compiled Laws, 1929.

Any incorporated city may, in addition to the special powers granted by the terms of its charter, or by any general law, have the power and authority to buy, sell, or exchange property, when deemed necessary or proper to realign, change, vacate or otherwise adjust any of the streets, alleys, avenues, or other thoroughfares or portions thereof, within its limits. Sec. 1128.01, Nevada Compiled Laws 1931-1941 Supplement.

General Statutes Affecting Unincorporated Cities and Towns

What is the nature of the general framework provided by law for the government of unincorporated cities and towns? No city or town shall be organized into an incorporated city or town unless more than 250 electors residing within the limits of such city or town cast ballots at the general election last preceding the application for incorporation. If less than 150 electors residing within the limits of any incorporated city or town cast ballots at the last general election, such city or town shall be disincorporated. Sec. 1213-1215, Nevada Compiled Laws, 1943-1949 Supplement.

An 1881 statute, as amended, generally defines the government of unincorporated cities and towns in Nevada, and provides that in addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of the various counties shall have the following powers with regard to the management of the affairs and business or any unincorporated city or town in their respective counties:

(1) To define boundary lines.
(2) To institute and maintain suits.
(3) To levy tax on property.
(4) To supervise streets and alleys.
(5) To condemn property.
(6) To establish fire departments.
(7) To regulate explosives.
(8) To abate nuisances.
(9) To collect taxes on places of business.
(10) To regulate licenses
(11) To restrain disorderly conduct.
(12) To regulate the sale of property.

(13) To provide punishment for misconduct.

(14) To adopt ordinances and regulations.

(15) To condemn property. (See (5) above.)

Annually at the time of assessing or fixing of the amount of taxes for county purposes, the board of county commissioners is required to assess, fix, and designate the amount of taxes that should be levied and collected for city or town purposes on all real or personal property assessable for state or county purposes within any town or city in their county. All taxes, fines, and forfeitures are required to be paid to the county treasurer. All salaries of officers and all expenses incurred in carrying out the city government are required to be paid out of the general fund of the city, and all claims for salaries and expenses must be presented to the board of county commissioners. Sec. 1231-1234, Nevada Compiled Laws 1929.

The boards of county commissioners have the power to regulate traffic on the streets and alleys of unincorporated cities or towns. Sec. 1231.01, Nevada Compiled Laws 1931-1941 Supplement.

In any county whose inhabitants number 12,000 or more, and where the board of county commissioners transact the business of unincorporated cities or towns, each member of the board receives additional compensation in the amount of $40 per month. Sec. 1245, Nevada Compiled Laws 1929.

None of the powers or jurisdiction of boards of county commissioners over unincorporated towns may be exercised until there has been filed in the county clerk's office a written petition for the application of such powers to a city or town, signed by a majority of the actual residents thereof, representing at least three fifths of its taxable property. If an unincorporated city or town has a voting population of 600 or more, no petition need be filed, but the powers and jurisdiction shall immediately apply thereto. Sec. 1246, Nevada Compiled Laws 1929.

As far as unincorporated cities and towns are concerned, the law defines the duties of justices of the peace, district attorneys, chiefs of police, county treasurers, and county clerks. Sec. 1240-1244, Nevada Compiled Laws 1929, as amended.

The boards of county commissioners are authorized to transfer surplus money in the fire department, town, or police department funds of unincorporated towns from one fund to the other. Sec. 1281, Nevada Compiled Laws 1929.

The county commissioners are authorized to levy and collect a tax of not exceeding one and one-half percent upon the assessed value of property within an unincorporated town for the benefit of the fire department. Sec. 1282, Nevada Compiled Laws 1929.

The sheriff of any county is authorized to designate one or more policemen of any unincorporated city or town as ex officio fire wardens. Sec. 1290, Nevada Compiled Laws 1929.

The boards of county commissioners of the various counties are authorized to levy and collect a tax of not exceeding one-half of one percent upon the assessed value of property within any unincorporated city or town for the benefit of the police department. However, this cannot be done unless a majority of the property holders in the city or town petition the board of county commissioners and request the appointment of such policemen. Sec. 1295-1305, Nevada Compiled Laws 1929.

Improvement of streets and alleys of unincorporated towns and cities may be made upon a petition presented to the board of county commissioners. Sec. 1309-1326, Nevada Compiled Laws 1929.

Full power and authority is granted to the county commissioners of the various counties whereby unincorporated cities and towns may acquire by construction, purchase, or otherwise, sewage systems, light systems, water systems, or combined water and light systems, and to issue bonds for the construction or purchase of the same, and to provide for the fixing and collections of rates for the service. Sec. 1327-1340, Nevada Compiled Laws, 1929.

Bonds may be issued by unincorporated cities and towns for the construction of sewage systems. Sec. 1375-1381, Nevada Compiled Laws 1929.

The 1937 Legislature enacted a revenue bond law for unincorporated cities and towns which authorizes them to acquire, construct, and improve various revenue producing undertakings such as water and sewage systems. Under its provisions, they are authorized to collect tolls and charges for the services and facilities provided, to issue bonds payable from the revenues, to regulate their issuance, and to handle other matters in connection with such bonds. Sec. 1397.01-1397.13 Nevada Compiled Laws, 1931-1941 Supplement.

Commission Form of Government for Incorporated and Unincorporated Cities and Towns

There are a number of laws that have to do with both incorporated and unincorporated cities and towns in Nevada. The most important of these authorizes the commission form of government for both types of cities and towns. Its first section provides that any city or town in the State of Nevada may adopt the commission form of government and frame its own charter therefor. Whenever the qualified voters of any city or town desire to adopt the commission form of government, they must declare their desire by filing with the legislative authority of such city or town, if incorporated, and if not incorporated, by filing with the county commissioners of the county

in which the city or town is located, a petition having the signatures of one-fourth of the qualified voters voting at the last city or precinct election. Then the legislative authority or the county commissioners are required to call an election, by ordinance or resolution, for the purpose of electing fifteen qualified electors, who are required to frame a charter that would set up a commission form of government for the city or town. Within thirty days after a majority of the fifteen persons so elected have agreed upon the form of the charter it must be submitted to the legislative authority or the county commissioners, who must then publish the proposed charter in a newspaper. Immediately after such publication, the charter must be submitted to the voters for their approval, and if it shall be found that a majority of the voters are in favor of the ratification of the charter, it then becomes the organic law of the city or town and supersedes any existing charter.

Under such a charter, all of the powers enumerated in the general laws for the incorporation of cities and towns, and all powers necessary to carry out the commission form of government, are available to the city or town. The charter shall fix the number of commissioners, their terms of office, their duties and compensation, and shall provide for all the necessary appointive and elective officers for a commission form of government, and is required to fix their salaries, their duties and powers, and the time of election of all elective officers. An extremely broad grant of power is given to cities and towns with a commission form of government. It is provided that any city or town adopting a charter under the provisions of this act shall have all of the powers which are now or may hereafter be conferred upon incorporated cities and towns by the laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree, whether the same shall be specifically enumerated in this act or not.

Provision is then made for the discontinuance of the commission form of government. Whenever one-fourth of the legal voters of any city or town which has a commission form of government, whether by general or special law, shall petition the district court in and for the county wherein such city or town is situated for the discontinuance and termination in such city or town of the commission form of government, it shall cause to be published for at least thirty days a notice stating the question of discontinuing and terminating the commission form of government, will be submitted to the legal voters of the city or town at an election. If it is found that a majority of the votes cast at the election were cast against the commission form of government, "the laws providing for the government of the cities and towns in this state shall supersede the provisions of this act." Sec. 1248-1256, Nevada Compiled Laws 1929.

Other General Statutes Affecting Both Incorporated and Unincorporated Cities and Towns

There are four other laws that are applicable both to incorporated and unincorporated cities and towns. Two of these have to do with the making of city and town maps and plats, and laying out land into lots, streets, alleys, and public places. Sec. 1341-1371, Nevada Compiled Laws 1929. Another authorizes any city or town to levy a special tax for the maintenance of a band for municipal purposes. Sec. 1390-1395, Nevada Compiled Laws 1929. And, lastly, there is another water and sewer revenue bond law with broader provisions than the revenue bond law referred to above, and that is applicable to both incorporated and unincorporated cities and towns, and to sewage, water, and garbage disposal and improvement districts. Sec. 1397.01-1397.05, Nevada Compiled Laws, 1943-1949 Supplement.

Special Acts Relating to Cities and Towns

What is the nature of the various special acts relating to cities and towns that have been enacted since Nevada became a state in 1864? Of late years, most of them have been had to do with the transfer of money from one fund to another in the various cities and towns, or authorizing construction of various public utilities, and sewage and water systems in the various cities and towns. Special acts incorporating or disincorporating various cities and towns have been enacted from time to time during the years, although matters of this type have not come before the Nevada Legislature for some time. Also, special acts authorizing city boards to issue bonds for the construction of highways through their cities have been quite common in the past. The following specific special acts illustrate the type of special legislation relating to cities and towns that has been enacted since 1864.

1. Granting to private individuals the right to supply the towns of Amador and Coral City with water.
2. Creating the Aurora City Gas Company.
3. Creating the Crystal Springs Water Company at Aurora.
4. An act to supply the town of Austin with water.
5. An act in relation to a city recorder's court.
6. Authorizing the sheriff of Lander County to appoint a night watchman in Austin.
7. Regulating the herding or grazing of sheep within a distance of four miles of Austin.
8. Granting the right of way and providing electric lights in Austin.
9. Granting franchises to private persons for the construction, maintenance, and operation of the electric plants and systems in the town of Austin along with rights of way.

10. Granting to the Las Vegas and Tonopah Railroad Company rights of way for its railroad through the streets and alleys of various towns.

11. Authorizing the filing for record of a plat of the town of Bunkerville in Clark County.

12. Authorizing the issuance of bonds for the retiring of an emergency loan in Caliente.

13. Providing for the pavement of the main street of Carson City.

14. Authorizing the board of city trustees of Carson City to fix the salary of members of the board.

15. Providing for the construction of a municipal auditorium in Carson City, and the issuance of bonds therefor.

16. Authorizing the construction of a sewage disposal plant at Carson City.

17. Providing for extensions and improvements of the storm drain system at Carson City, and authorizing an emergency loan therefor.

18. Validating proceedings having to do with the organization of certain street improvement districts in Carson City.

19. Providing that certain county officers be ex-officio officers of Carson City.

20. Regulating the compensation of the chief engineer and other employees of the Goldfield fire department.

21. Regulating the salary of the chief of police and other peace officers in Goldfield.

22. Authorizing the purchase of a rotary pump for the Goldfield fire department without advertising.

23. Creating a civil service commission in the City of Las Vegas, and providing for the regulation of the city's police department.

24. Deeding to the United States jurisdiction over certain lands needed for a post office site at Lovelock.

25. The granting of a franchise to various private persons for construction and operating street railways over certain streets and alleys in the City of Reno.

26. Authorizing the Reno City Council to dispose of certain lands belonging to Reno.

27. Authorizing the Reno City Council to donate parcels of real estate for library purposes.

28. Authorizing the Reno City Council to convey certain real estate to the United States government.

29. Authorizing a Civil Service Commission for the police and fire departments of the City or Reno.

30. An act for the relief of certain officers in Virginia City.

General Statutes Affecting Counties

There are 83 general statutes that have to do with various phases of the government and management of Nevada counties. In addition, there are a group of statutes creating Nevada's counties and defining their boundaries. A framework of home rule has thus been provided for Nevada's counties, and it appears that these laws have been fairly adequate since the government of Nevada's counties is fairly uniform. It would appear that a number of amendments to the Constitution of the State of Nevada, and some scattered amendments to these statutes might well provide a maximum amount of home rule in Nevada counties.

General Statutes Affecting County Commissioners

What is the nature of the general framework provided by law for the government of Nevada counties? The first and most important segment of county government is the board of county commissioners. Every board of county commissioners in the State of Nevada consists of three members. Sec. 1985, Nevada Compiled Laws 1929. One commissioner serves for a term of four years, and the other two serve for terms of two years each. Vacancies occurring prior to an election are filled by appointment by the governor. Sec. 1935, Nevada Compiled Laws 1929. No county or township officer is eligible to the office of commissioner. The commissioners must meet monthly, and the county clerk is the clerk of the board.

A number of court decisions have held that county commissioners can only exercise such powers as are specially granted, or as may be necessarily incidental for the purpose of carrying such powers into effect. Waitz v. Ormsby County, 1 Nev. 370 : Lyon County v. Ross, 24 Nev. 102. Boards of county commissioners have a host of powers and duties defined here and there throughout the entire body of law having to do with county government. They may temporarily fill vacancies in county, township, and precinct offices. They canvass election returns. They must take care of and preserve county property. They must examine, settle, and allow all accounts legally chargeable against the county. They are required to examine and audit the accounts of all officers. They must lay out, control, and manage all public roads and bridges within the county. They must take care of and provide for the indigent sick of the county. They may create and change the boundaries of townships within the county. They may establish, change, and abolish election precincts. They may lease or purchase any real or personal property necessary for the use of the county. They may sell county property at public auction. They may erect and furnish various county buildings. They may impose and collect a license tax on and regulate

various trades, callings, industries, occupations, professions, and businesses conducted in their respective counties, outside of the limits of incorporated cities and towns. They must control the prosecution or defense of all suits to which the county is a party, and they may do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board. Sec. 1942 Nevada Compiled Laws, 1931-1941 supplement.

Every demand against the county, except the salaries of the auditor and the district judges must be acted upon by the county commissioners, and after being approved by them, it must be presented to the county auditor and receive his approval before it can be paid. Sec. 1943, Nevada Compiled Laws, 1931-1941 Supplement. The board of county commissioners may require new and additional bonds for county and township officers, and they are required to see that all the county and township officers entrusted with the collection, disbursement, safe keeping, or management of the public revenue, faithfully perform the duties imposed upon them by law, and shall cause them to be prosecuted for any delinquencies. The board is required to publish quarterly a statement of receipts and expenditures of the county and the accounts allowed. They must not contract any debts or liabilities except those expressly authorized by law. Sec. 1947-1949, Nevada Compiled Laws 1929.

There are a number of provisions at law designed to prevent county commissioners from profiting from their official position. No member of the board of county commissioners shall be interested, directly or indirectly, in any property purchased for the use of the county, or in any purchase or sale of property belonging to the county, nor in any contract made by the county for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes; provided, that the board may purchase supplies for the county, not to exceed thirty dollars, in the aggregate, in any one month, for one of their number, when not to do so would be a great inconvenience, but the member from whom said supplies are purchased shall not vote upon the allowance of said bill, and the violation of this provision is a misdemeanor punishable by removal from office, and a fine not exceeding $500. Sec. 1955, Nevada Compiled Laws 1929.

In letting all contracts of any and every kind, character, and description, where the contract in the aggregate exceeds the sum of $500. county commissioners are required to advertise such contract in a newspaper in the county. All such contracts shall be let to the lowest responsible bidder. Sec. 1963, Nevada Compiled Laws, 1943-1949 Supplement.

No member of a board of county commissioners may vote on any contract which extends beyond the term of his office. Sec. 1973, Nevada Compiled Laws 1929.

No county officer except the board of county commissioners may contract for the payment or expenditure of any county moneys for any purpose whatever, or purchase any stores or materials, goods, wares, or merchandise, or contract for any labor or service whatever, except the board of county commissioners, or a majority of them, shall order such officer to do the same. Sec. 1975, Nevada Compiled Laws 1929.

It is unlawful for any county commissioner to become a contractor under any contract or order for supplies, or any other kind of contract authorized by the board of county commissioners of which he is a member, or in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized. Such contracts are void, and any person violating these provisions shall forfeit his office, and may be punished by a fine of not more than $5,000 or by imprisonment. Sec. 4827-4830, Nevada Compiled Laws 1929.

Every public officer who shall be beneficially interested, directly or indirectly in any contract, sale, lease or purchase which may be made by, through, or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accepts directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested therein, or uses any person, money, or property under his official control or direction, or in his official custody, for the private benefit of himself or another, is guilty of a gross misdemeanor. Sec. 10015, Nevada Compiled Laws 1929.

County commissioners may compromise damage claims. Sec. 1962.11, Nevada Compiled Laws 1931-1941 Supplement.

County commissioners may take such action as to enable their county to obtain federal or other aid which might become available for public works, improvements, or other public benefits. Sec. 1962.21-1962.37, Nevada Compiled Laws, 1931-1941 Supplement.

Whenever 20% or more of the qualified electors of any county shall petition the board of county commissioners of their counties to that effect, it shall be the duty of the county commissioners to divide the county into three commissioner districts. Each commissioner district shall embrace, as near as may be, one-third of the voting population of the county, to be determined by the vote cast at the last general election, and shall consist of adjoining precincts. Sec 1964. Nevada Compiled Laws 1929.

From time to time, the legislature has passed special acts establishing commissioner districts in Esmeralda, Lincoln, Mineral, Washoe, Storey, and Clark Counties. These have all been repealed except the acts relating to Washoe and Storey Counties. The 1933 act pertaining to Washoe County has been declared unconstitutional by the Supreme Court of the State of Nevada. McDonald v. Beemer, 220 Pacific 2nd 217.

The chairman of the board of county commissioners in each county is required to obtain from every county, school, and municipal officer having property under his control, a complete biennial inventory of all such property. Sec. 1970, Nevada Compiled Laws 1929.

The county commissioners may transfer money from any dormant fund to the general fund whenever the money remaining in suchd ormant fund is no longer required for the purpose for which the fund was established, but the state board of finance must approve such transfer. Sec. 1971.01, Nevada Compiled Laws, 1943-1949 Supplement.

Boards of county commissioners may make budgetary provisions for the transportation of non-resident indigents from their respective counties to the residence of such indigents. Sec. 1981.01, Nevada Compiled Laws, 1943-1949 Supplement.

County commissioners may employ fire wardens, and require all able-bodied male persons between the ages of 16 and 50 to assist in extinguishing timber and brush fires. Sec. 1982-1983, Nevada Compiled Laws 1929.

Boards of county commissioners may purchase United States bonds with county funds. Sec. 1987.01-1987.02, Nevada Compiled Laws, 1943-1949 Supplement.

County commissioners and the city councils of incorporated cities may enter into corporate agreements for the joint employment of clerical help in certain combined city and county offices. Sec. 1987.11-1987.13, Nevada Compiled Laws, 1943-1949 Supplement.

Boards of county commissioners operate as ex officio boards of equalization. In this capacity the boards have the power to determine the valuation of any property assessed for a tax, they may change and correct any valuation set by the county assessors, and they are required to hold hearings when protests are filed by property owners. Sec. 6434, Nevada Compiled Laws, 1931-1941 Supplement.

Boards of county commissioners operate as ex officio boards of examiners. The county auditors of each county are required to furnish the board with a statement of the amount of the money, securities, and other property in the custody of the county treasurer, and along with the board of commissioners is required to count, examine, and inspect the same and determine whether the funds, securities, and property of the county are all on hand and properly protected in the full amounts belong ing to the county. Sec. 1988-1989, Nevada Compiled Laws 1929.

Boards of county c ommissioners may build or purchase necessary county buildings, they may issue bonds for such purposes, and may levy a special tax to retire such bonds. Sec. 1991-1993, Nevada Compiled Laws 1929.

Upon a petition signed by the electors of a county equal in number to at least 50% of the number of votes cast for representative in congress at the last preceding general election, the board of county commissioners may reconvey to the persons, association, or corporations from whom the same was acquired, its right, title, and interest in any land donated and dedicated to the county. Sec. 1924-1996, Nevada Compiled Laws 1929.

Boards of county commissioners may acquire real estate for the purpose of sinking artesian wells thereon. Sec. 1997-1998, Nevada Compiled Laws 1929.

Upon petition signed by two-thirds of the tax payers of the county, county commissioners may purchase or construct railway lines. Sec. 1999-2006, Nevada Compiled Laws, 1929.

County commissioners may purchase, acquire, construct, and extend telephone lines, and issue bonds to pay for them. Sec. 2007-2016, Nevada Compiled Laws, 1929.

Upon petition signed by at least two-thirds of the tax payers of the county, county commissioners may purchase, acquire or construct electrical power plants and lines, and maintain, operate, and extend them as a public utility, and may issue bonds to pay for them. Sec. 2017-2026, Nevada Compiled Laws, 1929.

County commissioners may expend county money in order to exploit and promote the agricultural, mining, and other resources, progress, and advantages of their respective counties. Sec. 2027-2029, Nevada Compiled Laws 1929.

County commissioners in their capacity as ex officio sanitary boards are authorized to create sewage, water, or garbage disposal districts by ordinance. Sec. 2029.01-2029.15, Nevada Compiled Laws 1943-1949 Supplement.

The board of county commissioners, the sheriff , and the district attorney of a county constitute a county licensing board which may require licenses and collect fees for the operation of pool halls, dance halls, bowling alleys, theatres, soft drink establishments, gambling games, and other places of amusement, entertainment, or recreation. Sec. 2037-2040, Nevada Compiled Laws 1929.

County commissioners are required to provide by ordinance for the licensing of tent shows and circuses in unincorporated cities and towns. Sec. 2041 Nevada Compiled Laws 1929.

County commissioners may abate nuisances. Sec. 2043, Nevada Compiled Laws 1929.

County commissioners may grant leaves of absence to county officers. Sec. 2047-2049, Nevada Compiled Laws 1929.

County commissioners may pay their membership dues in the Nevada association of county commissioners out of county funds. Sec. 2046.01-2046.03, Nevada Compiled Laws, 1943-1949 Supplement.

County commissioners of counties having a population of 15,000 or more may operate, manage, improve, and maintain public parks, golf courses, and other public recreational centers and areas. Sec. 2049.01, Nevada Compiled

Laws 1931-1941 Supplement.

County commissioners in counties having a population of over 10,000 may acquire by purchase, gift, or in any other manner, parcels of land for parks, recreation, and memorial purposes. Sec. 2049.11-2049.12. Nevada Compiled Laws 1943-1949 Supplement.

County commissioners of those counties having populations in excess of 10,000 may appoint a county manager. Chap 221. Statutes of Nevada 1951.

County commissioners of those counties having populations in excess of 10,000 may appoint a county engineer. Sec. 2188.11-2188.12, Nevada Compiled Laws, 1943-1949 Supplement.

County commissioners of those counties having a population of 15,000 or more may employ a county statistician and appraiser. Sec. 2092.01, Nevada Compiled Laws, 1943-1949 Supplement.

County commissioners in those counties having a population in excess of 15,000 are authorized to construct, operate, and maintain improvements to road, parks, playgrounds, curbs, gutters, sewer systems, or any other county property. Sec. 2210-2210.23, Nevada Compiled Laws, 1943-1949 Supplement.

Any county may establish a public hospital, whenever the board of county commissioners are presented with a petition signed by at least 30% of the tax payers in the county asking that an annual tax be levied for the establishment and maintenance of a public hospital. Then the county commissioners are required to submit the question to the qualified electors in the county at the next general election, and if a majority of the votes cast are in favor of the tax, the county commissioners are required to levy the tax and establish the hospital. Sec. 2225-2242, Nevada Compiled Laws 1929.

The county commissioners may appoint a board of law library trustees consisting of the district judge and four members of the county bar to establish and operate a county law library. Sec. 2250-2265, Nevada Compiled Laws 1929.

County commissioners are required to fix the compensation of the several township officers within their respective townships for the ensuing term, either by stated salaries, payable monthly, or by fees, as provided by law, or both. Sec. 2201-2205. Nevada Compiled Laws 1929.

County commissioners may fix the amount of expense money for traveling and subsistence per day of county and township officers and employees while traveling on official business. Sec. 2207-2209, Nevada Compiled Laws 1929.

County commissioners and the governing body of any incorporated city may enter into cooperative agreements for the joint use of any personnel, equipment, or facilities. Sec 2212-2212.03, Nevada Compiled Laws, 1943-1949 Supplement.

Any county, school district, or city may, through its governing body, enter into a cooperative agreement with any other such political subdivision for the joint use of hospitals, road construction and repair equipment, and such other facilities or services as may be used for the promotion and protection of the health and welfare of the inhabitants. Sec. 1929.26-1929.28, Nevada Compiled Laws, 1943-1949 Supplement.

When 10% of the total number of owners of real property in an area containing not less than 100 inhabitants petition the board of county commissioners, mosquito abatement districts may be organized within the counties. Chap. 277. Statutes of Nevada 1951.

When 25% or more of the owners of contiguous land within a county petition the board of county commissioners, fire protection districts may be organized within the counties. Sec. 1929.01-1929.12, Nevada Compiled Laws, 1931-1941 Supplement.

County commissioners may enter into cooperative agreements with the governing bodies of the various cities for the use of fire fighting personnel and equipment.

County commissioners are required to have made an accurate survey of the boundaries between the several counties. Sec. 1917-1923, Nevada Compiled Laws, 1929.

County commissioners may provide voting machines in their respective counties. Chap. 136, Statutes of Nevada 1951.

Whenever three-fifths of the qualified electors of any county petition the board of county commissioners for the removal or location of the county seat, county commissioners are required to cause an election to be held on the matter within 60 days. The place receiving the majority of all the votes cast at the election shall be declared a county seat. If no place receives a majority of the votes cast, a second election is required, but the balloting is confined to the two places having the highest number of votes at the first election. Sec. 1924-1928, Nevada Compiled Laws 1929.

General Statutes Affecting Other County Officers

There are general statutes relating to the election, powers, and duties of county assessor, county auditors, district attorneys, county clerks, public administrators, county recorders, sheriffs, county surveyors, and county

treasuries. In 1885 a general statute was enacted fixing the salaries of county officers for the various counties, but since that time many special statutes have been enacted fixing the salaries of the county officials in specific counties, and at the present time there is no uniformity of salary for the same county officials in different counties. The same 1885 law requires that all county offices that collect fees, percentages, and compensation other than salary, shall pay the same to the county treasury monthly and must compile a monthly statement of all such collections. Sec. 2196-2200, Nevada Compiled Laws 1929.

Special Acts Relating to Counties

What is the nature of the various special acts relating to counties that have been enacted since Nevada became a state in 1864? An examination of these special acts reveals that three or four times as many special acts pertaining to counties have been passed by the Nevada legislature as those relating to cities and towns. Through the years many of the special county acts have had to do with the issuance of bonds or the levying of special taxes for various public projects or purposes. Of late years, most of them have had to do with setting the salaries of county officers in specific counties, and transferring money from one fund to another. The following specific special acts illustrate the types of special legislation relating to counties that have been enacted since 1864:

1. Legalizing the assessment of real and personal property made by the county commissioners of Lyon and Churchill Counties.
2. Relief acts for specific persons who were county officials.
3. Prescribing the salaries of county officers in special counties.
4. Authorizing citizens of Churchill County to construct a b ulkhead on a branch of the Carson River.
5. Providing for the payment of outstanding warrants against the transcript fund of Churchill County.
6. Providing for the transfer of moneys from one county fund to another.
7. Providing for the payment of outstanding indebtedness of a county.
8. Providing for a county hospital in Churchill County.
9. Authorizing the board of commissioners to provide for the storage and distribution of water and to issue bonds.
10. Authorizing county commissioners to purchase a telegraph line.
11. Encouraging the construction of a railroad.
12. Consolidating certain county officers.
13. Providing the compensation of county officers.
14. Removing a county seat from one town to another.
15. Authorizing county commissioners to issue bonds for the construction of county buildings.
16. Authorizing county commissioners to issue bonds to construct a nd maintain a toll road.
17. Authorizing county commissioners to issue bonds for the construction of county roads and bridges.
18. Authorizing school trustees of a school district in a county to issue bonds for installing water and sewer connections.
19. Separating certain county officers.
20. Making the district attorney of Churchill County ex officio public administrator.
21. Authorizing county commissioners to issue bonds to aid in the construction of state highways.
22. Authorizing county commissioners to issue bonds to aid owners of agricultural lands in leveling the lands and placing the same under cultivation.
23. Authorizing county commissioners to issue bonds for equipment and maintenance of county telephone and telegraph systems.
24. Authorizing the issuance of county bonds for the purpose of furnishing transportation of high school pupils.
25. Authorizing county commissioners to create a post-war reserve fund.
26. Providing for the compensation and payment of grand and trial jurors and fixing the fees of witnesses in criminal cases.
27. Authorizing county commissioners to fix the wages for teams and employees used in the construction and maintenance of county roads.
28. Authorizing boards of school trustees to sell property, issue bonds, etc.
29. Prescribing the hours that county offices shall be open in Clark County.
30. Extending the time for the collection of taxes in Washoe and Douglas Counties.
31. Authorizing a district judge in Douglas County to sign records in the counties of Storey, Ormsby, Lyon, Douglas and Esmeralda.
32. An act for the relief of Douglas County for money advanced for the Midwinter Fair in 1896.
33. An act to submit the question, "Shall Storey, Ormsby, Lyon, and Douglas Counties be consolidated?" to the electors of said counties.

34. To prevent the running of stock at large in Douglas County.

35. An act to submit to the people of Elko, White Pine, Nye, and Lincoln Counties a proposition to give county aid to a railroad from Elko to the Colorado River.

36. To legalize certain acts of the board of county commissioners.

37. To legalize the issuance of certain Elko County bonds issued as aid in the construction of a preparatory school for the University of Nevada.

38. Authorizing Elko County commissioners to reimburse the paid-up subscribers to the State University Building Company at Elko.

39. To grant leave of absence to a district attorney and an assessor.

40. Creating the office of road supervisor.

41. Authorizing county commissioners of Elko to contract with officers of the U. S. government for right-of-way and drainage and sewage from an Indian school.

42. Authorizing county commissioners to appoint deputy county officers under certain circumstances.

43. Authorizing the district attorney of Elko to employ a stenographer.

44. Authorizing county commissioners to levy a special tax for the support of the Elko County Fair.

45. Authorizing county commissioners to pay a claim of a detective agency.

46. Relieving the Elko County treasurer of liability in connection with money on deposit in a certain closed bank.

47. Granting a franchise to the Wells Power Co.

48. Providing for the confirmation and transfer of judgements, and in relation to actions at law now pending in the courts in California, affecting persons and property within the counties of Esmeralda, Roop and Mono and any other territory that may hereafter become a part of the Territory of Nevada.

49. Extending the time of collection of taxes in Esmeralda County.

50. Providing for the sinking, boring, and development of wells in southern Nevada.

51. To fix the fees in civil cases in the justice's court in Esmeralda County.

52. Creating the office of purchasing agent in Esmeralda County.

53. Providing for the payment of expenses incurred in the suppression of the so-called Italian coal burners' outbreak in Eureka County.

54. Authorizing county commissioners to pay claims of persons complying with section 1 of an act entitled "An act to encourage the growth of forest trees."

55. Relating to transcribing and indexing certain records in Humboldt County.

56. Authorizing mileage for county commissioners.

57. Authorizing Humboldt County commissioners to provide for the imprisonment of certain prisoners in the branch county jail at Lovelock.

58. Authorizing and requiring Humboldt County commissioners to appoint a janitor at the court house and the jail, who shall also be deputy sheriff.

59. To withdraw a piece of public land from entry and sale, and granting it to Humboldt County.

60. Authorizing Humboldt County commissioners to acquire by purchase, gift, or any other manner, parcels of land for park, recreational and memorial purposes.

61. Changing the name of Lake County to Roop County.

62. Authorizing Lander County commissioners to appoint a night watchman for the town of Battle Mountain.

63. Granting a franchise to H. C. Christensen and H. R. Lemaire to construct, maintain, and operate a plant and distributing system for generating electricity, and a telephone line in Lander County.

64. An act to submit the question "Shall the County of Lincoln be divided?" to the electors of Lincoln County at the general election of 1898.

65. An act to create a special jury fund.

66. Authorizing the acquisition of certain public utilities.

67. Authorizing the Nye County commissioners to negotiate a loan.

68. Providing for the payment of rent for the use of the capitol building and to reimburse Ormsby County for the amount expended in preparing the building for the occupation of the legislature and state officers.

69. Authorizing the Ormsby County commissioners to donate and convey certain real estate to the State of Nevada.

70. Authorizing the Pershing County commissioners to construct a bridge.

71. Authorizing the trustees of the Virginia City school district to convey to Storey County a certain old school building for museum purposes.

72. Authorizing County commissioners of Storey County to sell or lease the county hospital property.

73. An act for the relief of the sufferers by the breaking of the Little Valley dam near Franktown, Nevada.

74. Establishing assembly districts in Washoe County.

75. Authorizing the Washoe County commissioners to set an additional tax on property to help pay the cost of the 1927 Nevada Transcontinental Highways Exposition, and authorizing them to appoint a board of governors of the Exposition, defining their duties, and establishing a special fund.

76. Authorizing the Washoe County commissioners to borrow money to pay a deficit in the 1927 Exposition.

77. Authorizing the Washoe County commissioners to aid in the acquisition and construction of works and improvements for up stream storage of waters of the Truckee River, and to issue bonds for the purpose.

78. Authorizing the Washoe County commissioners to convey certain land to the U. S. government.

79. Authorizing the Washoe County commissioners to pay not exceeding $50 a month from the Washoe County general fund to the Oregon State School for the Blind for the care, support, and education of Bonnie Yturbide.

80. Authorizing the Washoe County commissioners to create a post-war reserve fund.

81. Authorizing White Pine County commissioners to levy a special tax annually for the support of the White Pine County Fair.

82. Authorizing the establishment of commissioner districts for Esmeralda, Lincoln, Mineral, Washoe, Storey, and Clark counties.

Effect of Local Legislation on the Nevada Legislature

The general impact of local legislation on the legislative processes of the Nevada legislature was discussed in "Survey of the Functions of the Offices, Departments, Institutions, and Agencies of the State of Nevada and what they Cost." Bulletin No. 1, issued by the Nevada Legislative Counsel Bureau in January 1947, as follows:

> "During the 42nd Session of the Legislature (1945), there were 241 bills introduced in the Assembly and 165 bills introduced in the Senate. Of the 241 Assembly Bills, 35, or approximately 1/7 of the total, were county and municipal measures of local significance and interest only. Of the 165 Senate Bills, 28, or approximately 1/6 of the total were local measures. There were 1,685 printed pages of bills for both houses during the Session, with a total printing cost of $3,321. Of these totals, 301 pages were local measures, with a cost of approximately $592.97. In other words, if the problems involved in the local measures could have been solved in a satisfactory manner outside of the legislative halls, $592.97 and much time and work would have been saved for the state.
>
> When a bill of local significance and interest only is introduced by a legislator, it is invariably enacted into law without discussion, opposition or interest on the part of the other legislators. It is assumed that the legislator that introduced the bill is conversant with the affairs in his county and is acting with the consent and support of his constituents.
>
> It would seem that time and money could be saved if such measures were taken out of the legislative field and placed under the jurisdiction of the county commissioners. Legislators and county commissioners are all elected by the people, but they function on different levels. Legislators are concerned with matters of state-wide significance; they meet only once every two years for a period of two months, and, except for Ormsby County, they meet outside of their home counties. County commissioners are concerned with matters of local significance only; they may meet whenever there is a need, and they meet right at home where the people they represent may attend and make their views known. If county commissioners had the power to enact local bills into law, time would be saved, there would be better coordination between the people and their elected representatives, and the general efficiency of our governmental system would be improved. Under our present system, the lack of cooperation between legislators and county commissioners, the tendency to "pass the buck" and the generally loose relationship existing between the people and the two groups of elected representatives make for inefficiency as far as local legislation is concerned. Removal of consideration of local measures from the legislative field would remove one of the groups and tighten up the system.
>
> However, there must be adequate provision made to insure that county commissioners do not overstep the bounds of their authority, and encroach upon the field properly reserved for the legislature. For instance, who is to determine whether a measure is of local significance only? What about those cases where a measure has dual significance? The simplest and most effective way of meeting this problem is to specify exactly in the Constitution or the enabling act just what classes of measures may be considered by county commissioners. An examination of the 63 local bills introduced at the 42nd Session (1945) shows that approximately 3/4 of them were concerned with raises in the salaries of county officials or the transfer of money from one county fund to another. The enabling act could specify those two matters as well as such matters as zoning, bond issues,

etc. The sense and discretion of the legislature can solve the problem, but there must also be conformity with the requirements of the Constitution.

Sections 20 and 32 of Article IV of the Constitution of the State of Nevada determine the power of the legislature over local matters and officers. It may be necessary to amend those sections of the Constitution if the legislature is to delegate certain powers to the county commissioners. Legislative study and consideration of the problem should be undertaken, with the view of increasing the efficiency of our governmental system.

However, certain procedural steps might be taken that would prevent local measures from covering the legislative calendar near the end of the session when there is a "legislative jam." A previous section of this report entitled "Bifurcated Sessions" explained in detail the effects of a split session where bills may be introduced only during the first half of such session. Such a system would solve the problem for all bills, local and general.

Under our present system, standing rules might be adopted in the houses that would require local measures to be introduced during the first thirty days. Simple house resolutions adopted by a two-thirds majority would amend the standing rules. The objection might be raised that the adoption of such a standing rule at the beginning of the 43rd Session (1947) might work a hardship upon the counties and municipalities of the state because they would not have had sufficient warning and time to draw up their bills. But the answer to that is that the rules may be temporarily suspended by a two-thirds majority of the house, and such procedure would allow a local bill to be introduced after the first thirty days if necessary. As far as future sessions are concerned, such suspension might be a weakness, because in actual practice the houses would rarely fail to suspend the rules if some member desires to introduce a local bill during the last thirty days of the session. To make the proposition binding, it must be enacted into law."

A study of the laws passed by the Nevada legislature during the period 1861-1951, inclusive, reveals that 8,423 separate laws were enacted, of which 1,618 were local measures and 1,583 were special measures, for a total of 3,201 special and local measures. Thus, 19.2% of the laws passed since Nevada was organized as a territory were local measures, and 18.8% were special measures, with a combined percentage of 38% for special and local measures. Of the 8,423 laws, 5,222 were general in nature, or 62%. Impressions obtained from personal observation of the Nevada legislature, from the knowledge of local customs in cities and counties with respect to local legislation, and from experience with the concept of legislative courtesy respecting local laws, the inevitable conclusion is that consideration of local legislation by the legislature is necessarily somewhat perfunctory, and that little effort is being made within the legislature to voluntarily reduce the volume of local legislation. While the volume of special legislation appears to be considerably less than it was in the days when Nevada first became a state, it is still a matter of considerable proportion. It is a rare session of the legislature that there are not a goodly number of special bills introduced on the structure of county and city governments, fees of county and city officials, local finance, local health and sanitation, and duties and activities of county and city officials, the property and records of cities and counties, the salaries of county and city officials, transfers between funds, etc. Comparison of the provisions of these local laws with existing general laws in each of a dozen general categories, reveals that few of the local laws could have been termed unnecessary by reason of duplicating existing general laws, that a larger but still not unreasonable number set up simpler ways for achieving ends now available in the general laws, and that the largest number supplied powers and procedures not provided in the general laws. Only through an extension of general law powers and/or the grant of home rule powers can the ends of local legislation today be reached without using local acts.

A rough examination over a period of years reveals that perhaps twice as many laws are required for the counties of Nevada than are required for the cities and towns. The historic legal distinction between cities and counties, interpreted as a basic principle of good local government by practical legislators and shrugged off as a no longer potent anachronism by students of political science, is responsible for this difference. The distinction may not reflect the facts of county and city governmental problems today, but it remains a vital factor in legislation.

According to the traditional theory, counties serve as agents of the state in the performance of governmental functions essential to the good government of the state, while cities are chartered as special corporations to perform functions desired by the residents of heavily populated communities and not essential to all the people in the state. The Nevada legislature, through both general and local legislation, has delegated some broad powers of government to the cities while it has retained similar power over the counties. Thus, a city council ordinarily has complete discretion in the hiring and firing of employees as well as the power to determine the salaries to be paid. County commissioners have no similar supervisory powers over the elective county officers such as county clerks, county recorders, auditors and sheriffs.

Because the legislature has chosen not to delegate discretionary powers to counties, any changes in governmental powers or policy must come from the legislature. To the uninformed layman it may seem ridiculous that a city governing board has discretionary powers which are not shared by a county governing board sitting in the same city and elected by the same people. Once the layman begins to be informed, the forces which have produced the system assume an importance and stability far out of proportion to their historical roots. The heirs of the historical county tradition stoutly maintain the advantages of the system and certainly their arguments have been effective, for in the

United States scarcely two dozen counties have been chartered for local government along the lines of city government. Whether the government of counties should be under the complete control of the legislature, or whether certain county officers should continue to be elected under a constitutional provision, whether good local government is more dependent upon the unified supervision of an elected board or on the supervision of several elected officials, or whether county government is dying or is potentially the strongest unit of local government, the fact remains that a system of detailed supervision of local affairs by the legislature seems to take away the essential elements of local responsibility for local affairs.

The existing constitutional prohibitions have not proven effective in limiting the volume of legislation on subjects generally considered by the Nevada legislature during the last fifty years. More effective have been changes in state policy which made matters formerly treated in local legislation a subject for general regulatory legislation. Existing general legislation is not broad enough to cover most of the objects sought by special legislation in fields where general law authority now exists. In other words, the general laws are not being progressively brought up to date, and in every session it appears that the volume of local legislation covering subjects formerly handled under general legislation is growing. The legislature could limit some local legislation, particularly city legislation, by a through revision of the laws concerning municipal corporations. A body of law which was adequate for the government of cities in 1917 is now out-dated in many respects. It cannot be kept up to date by a few general amendments and hundreds of local modifications. The volume of local legislation relating to counties will not be reduced so long as detailed supervision of local county matters is handled by the legislature. The principal county problem is determination of salaries and fees, followed by the need of counties, particularly heavily populated counties, for more discretionary powers with respect to the performance of governmental functions.

CHAPTER III

LEGAL RELATIONS OF STATES AND LOCALITIES[1]

The trends in state-local relations have been toward political centralization. This flow of power to central authorities is a world wide phenomenon. It has been impelled by social, economic, and technological factors. In the states, it rests on an elaborate legal edifice.

The Legal Status of Municipalities

The legal relations of states and municipalities were clearly described more than seventy-five years ago by Judge J. F. Dillon, the nation's foremost authority on municipal law:

> 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 it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation...the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations of the state, and the corporation could not prevent it.[2]

This rule of the complete legal inferiority of localities was once challenged by the doctrine that municipalities enjoy certain inherent rights of local self-government. The latter principle was first stated by Judge Cooley in a famous Michigan case in 1871 and was applied in a limited way by a number of state courts, including those of Indiana, Iowa, Kentucky, and Texas. The doctrine of inherent rights of local self-government has now lost even the small acceptance it once enjoyed. Furthermore, attempts of localities to invoke the due process, equal protection, and contract clauses of the federal constitution to guard their rights of self-government have been uniformly unsuccessful.[3] Authorities now deny, in toto, the existence of any inherent right of local self-government, and this view has been categorically affirmed by the Supreme Court of the United States.[4]

The legal inferiority of municipalities leads to important consequences in terms of local powers. Local governments exercise limited, expressly delegated authority, plus powers incident to the authority expressly granted, and those essential or indispensable (not simply convenient) to the accomplishment of the declared objects and purposes of the corporation. Reasonable doubt concerning the existence of power is resolved by the courts against the municipality.[5]

Municipal Charter Systems: An Overview

In eight states, localities are still granted charters through special acts. Five of these are in New England (Connecticut, Maine, New Hampshire, Rhode Island, and Vermont), and three in the Southeast (Delaware, Florida, and Tennessee). The ninth state in the special law category until August, 1945, was Georgia. Article XV of the new Georgia Constitution is titled "Home Rule." However, an examination of the article discloses that cities have no charter making powers and that Georgia's new system is actually one of optional charters.

The special charter system was once almost universally used. Its rejection by thirty-nine states is testimony to its shortcomings. In some states, a reaction to special charters was the imposition of a blanket, uniform charter system. The excessive rigidity of uniform local governments was, however, as great an evil as the confusion of special laws. There are, therefore, no longer any states with completely uniform charter systems. The system is approximated only in Indiana, where the mayor-council form of government is mandatory. Details in the governments of Indiana cities, however, vary somewhat with the size of the cities.

A compromise between special and uniform charters is a system of classifying cities according to population and providing a somewhat different type of charter for each class. Ten states now utilize this plan. In a number of these states, classification takes the form of allowing freedom of choice with respect to forms of government by cities of a certain size, while prescribing definite forms for other cities. In such cases, e.g., Wyoming, the system may approximate one of optional charters. On the other hand, as a later section shows, classification and sub-

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[1] The Council of State Governments, "State-Local Relations," Chicago, 1946, pp. 141-181.

[2] City of Clinton v. Cedar Rapids and Missouri Railroad Company, 24 Iowa 455 (1868).

[3] Howard Lee McBain, The Law and Practice of Municipal Home Rule, Columbia University Press, New York, 1916, pp. 17-29.

[4] Atkin v. Kansas, 191 U. S. 207 (1903); Trenton v. New Jersey, 262 U. S. 182 (1923).

[5] J. F. Dillon, Commentaries on the Law of Municipal Corporations, Little, Brown & Co., Boston, 1911, I, p. 448.

classification frequently have the effect of either freezing cities in a certain type of government or making them subject to laws that are special in everything but name. In some states, e. g., Nevada, classification exists but suffers from disuse in favor of special charters. Nevada has seven cities incorporated by special charter acts, namely, Carson City, Elko, Las Vegas, Reno, Sparks, Wells, and Yerington. Seven more are incorporated under a general home rule law (Sec. 1100-1212, Nevada Compiled Laws 1929) enacted in 1907, providing a major-council type of government, and classifying the cities and towns into three groups by population. The cities and towns incorporated under this act by groups are:

FIRST CLASS (20,000 people or more)	SECOND CLASS (5,000-20,000 people)	THIRD CLASS (under 5,000 people)
None	None	Caliente Ely Fallon Hawthorne Lovelock N. Las Vegas Winnemucca

The town of Carlin is the only town that is incorporated under a general law enacted in 1915 authorizing the commission form of government for cities and towns (Sec. 1248-1256, Nevada Compiled Laws 1929). The total number of incorporated cities and towns in Nevada is fifteen.

At least fourteen states have authorized optional charters.[6] Under this system, the state provides several definite schemes of local government from which nearly all localities are allowed to choose. In every case, the three principal forms of local government (mayor-council, commission, council-manager) are made available. In some cases, the choices are more numerous.

The home-rule method of municipal charter-drafting is now provided in the constitutions of eighteen states.[7] Home rule simply means that localities are given the constitutional privilege of framing charters of their own choosing. Within various limits, home rule cities establish their own governments and define the scope of their "local affairs." In some states, home rule privileges are limited to localities of a specified size, and states have various methods of granting charters to cities which have not taken advantage of home rule or do not qualify (because of age or other considerations) for it.

This catalog of charter systems has a deceptive simplicity. The methods of charter granting are by no means mutually exclusive and legal forms frequently do not disclose actual practice. In Pennsylvania and Utah there are no home rule cities despite the existence of constitutional provisions. So far as actual operations are concerned, Utah and Pennsylvania are in the category of classification states. Since Missouri (under its old constitution) allowed home rule charters to only Kansas City and St. Louis, it was predominantly a classification state.

In New York, home rule cities exist side-by-side with cities whose charters come from still extant classification and optional charter systems. Though special charters predominate in Tennessee, two optional general charters are available. In more than half the states, some cities continue to be governed by special charters granted to them before the adoption of newer systems.

The important result of this confusion of charters is that the state labels are sometimes meaningless. Home rule signifies little if it is legally possible but actually non-operating. Classification is little protection against special laws if classes are composed of a single municipality.

Finally, it should be understood that a municipality's charter consists of far more than the act under which it is incorporated. The bulk of a locality's charter rights and limitations is contained in all the accumulated statutes, both general and special, and all the court decisions that are pertinent. As with the national constitution, this legal framework is crusted over with extra-legal conventions that vary widely from state to state.

In many states codifications of municipal laws do not exist. Since municipal staffs are inadequate for the task of unraveling complicated legal tangles, localities frequently do not know what is required of them, prohibited to them, or in the scope of their discretion. The recommendation made in Part Two bears repetition: All states should codify their municipal laws.

Special Legislation

Until the middle of the last century, when techniques of varying effectiveness began to be invented for the purpose of curbing legislative powers, legislation directed at a single municipality was a widely-used device in

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[6]Georgia, Idaho, Iowa, Kansas, Massachusetts, Missouri, Montana, New Jersey, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

[7]Arizona, California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wisconsin.

virtually every state. These laws were easily passed. Applicable to but a single community, they were not likely to inspire widespread public protest. They were promulgated before citizens of the affected community knew of of their existence. Frequently they resulted from the activity of self-interested political cliques and economic groups.

State legislatures sometimes put their plenary powers to a variety of genuinely useful purposes, for the device of local legislation was well calculated to fit local governments to local conditions. At the same time, the system was open to numerous abuses. In New York, for example, an 1857 statute created a strong metropolitan police district, including the city of New York and certain outlying areas. Control of the district was entrusted to a commission, appointed by the governor and senate. Residents of New York city rioted in protest. But the act was declared valid by the state courts. Pennsylvania legislation of 1901 similarly divested local officials of their powers. In California the legislature habitually made it mandatory for cities to erect municipal structures of a specified cost at a designated place.

Recent examples of the same type of legislative tactics are not difficult to find, but organized protests and the imposition of constitutional restrictions on legislatures have curbed the worst excesses of these special laws. Special legislation, nevertheless, remains a pressing problem in a number of states, and especially in those states where special charter systems still prevail.

The situation in Georgia under the recently discarded constitution was both typical and instructive. A constitutional prohibition against special legislation was completely without force. Special laws dealing with single municipalities were passed by the hundreds, and the Georgia Supreme Court consistently upheld a doctrine under which Georgia municipalities were completely dominated by legislative acts.

In numbers alone, the production of special legislation was impressive, and there was no slackening with the years. For example, 67 local laws were passed in 1877 and 108 in 1899. In 1929, there were 155 special local statutes and in 1931 there were 103. In more recent years the score card runs: 1933, 79 special acts; 1935, 73 acts; 1937, 84; 1939, 111. The 195-acts passed during the regular sessions of 1937 and 1939 were further supplemented by 77 laws promulgated at a special session.

The local legislation in Georgia dealt with a great variety of subjects, and many laws in a single session were concerned with the same subject and the same city. In one year, for example, twenty-three separate laws conferred authority upon twenty-three separate municipalities to sell liquor. The city of Atlanta was the subject of seven laws in 1933; of eight in 1935;of eight in 1937; of four in the extra session in 1938; and of ten in 1939.

In Maryland, the legislature of 1939 passed no fewer than 509 acts relating to individual counties, towns, or cities. These constituted approximately two-thirds of the total number of laws enacted. At each regular session from 1920 to 1940, local acts at a conservative estimate made up between 50 and 65 per cent of the total legislative output. More than 4,000 special local acts were passed between 1915 and 1940.

A large number of laws set specific salary rates for specific officers in specific localities. As for other matters, a 1939 act of the Maryland legislature reduced from $5.00 to $2.00 the annual license fee for owners of unspayed female dogs in Frederick County. Another act "authorized and empowered" the town of Hyattsville "to purchase on a deferred payment plan...one modern hook and ladder fire truck and equipment at a price not to exceed $20,000."

In a number of other states, local legislation of a similar type occupies a major portion of the legislature's time. This is true not only of other special charter states, such as Florida, but also of states operating under other charter systems. In Alabama, a classification charter state with elaborate constitutional provisions against local laws, one-half of the total legislative product is in the form of local laws. In North Carolina, an optional charter state, approximately two-thirds of the laws passed are special or local.

Comment: Special Legislation

The actions taken through local legislation may not be undesirable in themselves. Local acts in large part fulfill legitimate needs. The trouble is not that too many laws are made, but that too many laws are necessary. To place the complete burden for making these decisions upon state legislatures results disadvantageously for both legislatures and localities. With respect to the legislature, the objections to local legislation are:[8]

1. The burden of local legislation makes undue demands on the time of members of the legislature. The decisions on local matters may be of insignificant importance from the viewpoint of the entire state and may occupy little time before the legislature as a whole. Nevertheless, local matters occupy a large part of the time of individual members. Many legislatures are limited by constitutional provisions with respect to the number of days they may meet, and the consideration of general legislation is more than sufficient to occupy a member's full time. Thus, preoccupation with special local statutes, makes it impossible for members of the legislatures to give important statewide legislation the consideration it demands.

2. Extensive special legislation accentuates the feeling of localism in state legislatures. As a North Carolina observer has pointed out, "with almost every member of the two houses primarily

[8]The immediately following analysis is adapted from Maryland State Planning Commission and Maryland Legislative Council, The Problem of Local Legislation in Maryland (A report by V. O. Key, Jr), Baltimore, 1940, pp. 3-4.

interested in getting through a number of bills relating only to his home community, the whole General Assembly is locally minded. Only a few of the outstanding leaders are state-conscious.

3. Log-rolling practices are encouraged. In the process of special legislation it is common practice for a member to approve more or less automatically the bills presented by the representatives of any given district. In return, he expects his own measures to be similarly treated.

4. Irresponsible legislation is fostered. Legislatures can give only cursory examination to the mass of local laws, and statutes are habitually passed on the simple recommendation of the representatives of a given locality.

Systems of local legislation bring even greater disadvantages to localities:

1. Local legislation makes for confusion and instability in local government. With the same legislature passing both general and special laws, it is a difficult task for local officers to keep track of what is required of them. This mitigates against good government. In some states, the multiplicity of laws sometimes results in actual contradictions among the operative provisions of statutes applicable to a single locality.

The system of local legislation has the unfortunate effect of bringing local affairs into the state-wide political arena. A major share of the attention of municipal officers is often diverted from their regular duties to legislative matters, and state political issues are injected into purely municipal affairs. In Florida, "the ability of the city to secure special legislation is...affected by the standing which the local delegation has in the legislature." A similar situation exists in a number of other states.

3. Most important of all, systems of local legislation remove the control of local affairs from the hands of local citizens. Very often, legislatures impose a form of government or mandatory duties upon a locality without determining the wishes of the local citizenry. This is the situation at its worst. At its best, local legislation makes for a great deal of unnecessary delay in the determination of local affairs. New fields of endeavor or new procedures for action will almost invariably demand a legislative act. Local democracy is thwarted, even where the approval by the state legislature of special acts is purely nominal. Municipalities are sometimes forced into technically illegal situations, illustrated by the practice in some states (in California and the South, generally) of securing a legislative validation of local bonds after they are issued.

In sum, extensive local legislation burdens the state law making body with local matters with which it is not properly concerned; prevents the legislature from considering problems of state-wide importance, thereby accentuating the spirit of localism in the legislature; and encourages the trading of votes which prevents both special and general laws from being considered on their merits. From the viewpoint of the localities, such a system brings about confusion and instability; injects state-wide political maneuvering into local problems; and, in general, makes difficult the local control of local affairs.

The following methods have been adopted in a number of states to provide full publicity and local consultation in the enactment of local laws: (1) constitutional provisions making it mandatory to advertise the intention of passing a special law before the law is actually enacted (first introduced in Massachusetts and now found in the constitution of some eleven states); (2) the provision found in New York's constitution of 1894 that required the assent of the local officials concerned before a special law became effective (the legislature retained the right to reenact laws rejected by local officers); and (3) amendments to the Illinois constitution of 1904 (applicable to Chicago only) and the Michigan constitution in 1908 (applicable to all cities) which required that special laws were subject to a referendum in the city concerned. New York's requirement for the approval of local officials was "unquestionably highly beneficial to the cities" of that state. But, these experiments, as a whole, have been inconclusive.

The total evidence indicates that systems of special legislation, as they now operate in the United States, should be abandoned to every extent possible. When used, special laws should be preceded at least by adequate notice to the locality concerned, and procedures should be established by which affected citizens and local officials can express their views.

Comment: Special Charters

There is undoubtedly one prime advantage in a system of charters based on locals laws. It is a flexible system. It provides a state legislature with free opportunity to endow a given municipality with exactly the type of government and the range of authority best suited to the needs of that locality. But the defects of the system as it now operates far outweigh this advantage.

As indicated in a previous section, the infirmities of special legislation are not restricted to the eight states operating under the special charter system. It must be emphasized, however, that the unique disadvantage of special charter systems is the fact that they encourage special local laws to the serious impediment of both states and localities. For this reason, and in the absence of drastic revisions in administrative practices and legislative procedures, there seems little justification for the retention of the special charter systems.

Prohibitions Against Local Legislation

As early as 1812, provisions appeared in state constitutions prohibiting certain types of special, local legislation. Today prohibitions against local legislation are found in the constitutions of forty-two states. These range from prohibitions against special laws incorporating municipalities (in twenty-four states); through specific prohibitions with respect to locating county seats, conducting elections, and collecting taxes; to general prohibitions against special laws "when a general law is applicable" (in thirty-one states). A long list of other prohibitions normally exists. As indicated in Chapter 11, Section 20 of Article IV contains the list of prohibitions in Nevada's Constitution.

Experience has amply demonstrated the shortcomings of these prohibitions. State courts traditionally interpret them in a narrow fashion. The fact that a legislature is enjoined from incorporating municipalities by special law will not be stretched to prohibit it from passing special laws to amend city charters or to add (or subtract) from municipal powers. More importantly, evasion of prohibitions with respect to special laws is carried out through a process of legislative classification toward which the courts almost invariably show wide tolerance.

If a classification is "reasonable," the courts will ordinarily sustain it. The courts have considered it their duty, in the words of an Alabama decision, "not to construe a law as local when it is so worded as to be interpreted as a general one..." If an act is general in language, its validity is not affected by the fact that it applies only to a single locality. Thus, state legislatures are freed by the courts to legislate for specific localities under the fiction of general (classified) laws.

The practice, in fact, is widespread. In at least nine states, general classification laws place only one city in a given class. Thus, Indianapolis is the only first class city in Indiana, and Louisville the only first class city in Kentucky. In Pennsylvania, Philadelphia stands alone in the first class; Pittsburgh alone in the second class; Scranton alone in "second class A." Cities in California are subdivided by two general classification laws which results in ample room for special legislation and in a considerable degree of confusion.

The complexities of general classification laws are more than matched in a number of states by statutes which set forth their own classifications. By this process, state legislatures are able to group cities in one law, to separate them in another, to separate them according to a new set of criteria in a third, and to isolate them in a fourth. Legislatures have shown an inventive flair in devising classifications in order to achieve statutes that are general in form though special in fact. A law in Minnesota, for example, refers to "counties now or hereafter having twenty-four organized townships and a population of not less than 23,500 and not more than 24,000, and a land area of not less than 795 and not more than 805 square miles..." A Texas law refers to cities in counties "with a population between 14,588 and 14,800." Despite elaborate constitutional prohibitions against special laws in both states, the courts have consistently sanctioned this type of statute.

Thus, the first conclusion with respect to prohibitions against special charters is that they don't always work. The second conclusion is: if they do work, they may lead to serious embarrassment.

This may be illustrated by the experiences of Ohio. From 1852 to 1902, the Ohio legislature concerned itself with classifying cities in a variety of ways so that special legislation might be passed in the face of constitutional prohibitions. By 1902, there were eleven classes of cities, eight of which contained only a single municipality. The city of Ashtabula, for example, was designated as "all cities in the first subdivision of grade four in class two." In 1902, however, the state supreme court declared the whole classification process unconstitutional. The legislature was forced to convene and to enact a general code for all cities. The results have been graphically described by Munro:

> There were seventy-two cities in Ohio, with populations ranging from 5,000 to more than half a million...Every city, even the smallest, was required by the general code to maintain a director of public service, a director of public safety, a city solicitor, a city engineer, and at least a score of other officials, many of whom had virtually no duties to perform. This, of course, was an absurdity. The larger municipalities complained that they were under-manned in officials and deficient in powers--that they could not handle their big problems within the rigid terms of the general law....The smaller cities, on the other hand, found themselves burdened with much administrative machinery which they did not want and provided with many powers which they could not use.
>
> These ten years of municipal history in Ohio demonstrated the futility of trying to deal with all cities by a uniform code when there is in fact no uniformity in the problems which the cities have to solve. Conditions which are varied cannot be made homogeneous by a stroke of the pen.

Comment: Prohibitions Against Special Legislation

The chief value of constitutional prohibitions against special legislation is that such prohibitions may compel a legislature to formulate statutes in general terms and thus remove itself from the affairs of individual localities. There

can be little doubt that this pressure has produced some beneficial results, especially for smaller cities. By virtue of prohibitions against special laws, these cities are freed from the annoyance of a constant legislative tinkering with their charters. As Howard Lee McBain has pointed out, "it is easy...to magnify the failure of the requirement of general legislation facilities."

Against this beneficial effect must be balanced the peculiar dilemma inherent in blanket restrictions of local laws. If they can be evaded by the legislature, they may become worthless. If they are rigidly enforced, they may do more evil than good. In the first instance, legislatures are again free to interfere at will in local affairs. In the second instance, municipal freedom may be stifled by the blanket of excess uniformity.

In actual fact, it is the first course that has been generally followed. State legislatures have perfected techniques of classification by which statutes have become special in everything but name. Except in rare instances, the courts have sanctioned this practice.

Speaking broadly, it may therefore be stated that prohibitions against special legislation, in the main have been unsuccessful. They have not, in a large number of states, produced general legislation at all.

There is, of course, an obvious device by which the excessive rigidity induced by the strict application of prohibitions against special laws may be met. This is by the use of permissive, rather than mandatory, statutes. In some states localities have achieved substantial grants of local discretion th rough general laws of a permissive character. This is true especially in Wisconsin.

Where prohibitions against special laws are balanced by appropriately broad general statutes, they may be productive of highly beneficial results. This point is more fully discussed in a later section.

Comment: Uniform Charters

Uniform charter systems are no more than the extreme expression of prohibitions against special laws. They have failed, like special law prohibitions, because of the absolute necessity for meeting diverse local conditions. If a uniform charter system is not accompanied by a grant of local discretion, it suffers from excess rigidity and is intolerable. Experience in Ohio between 1902 and 1912 amply demonstrated this fact.

Classification Charters

The plan of granting charters to cities under a system of classification represents a compromise between special and uniform charters. The peculiar vice of the special charter system is its invitation to legislative interference in the affairs of a specific city. The drawback of the uniform charter system is its excessive rigidity. Classification is calculated to meet the objections from both sides. By making charter provisions for three or more classes of cities, it acknowledges that municipalities of different size require different forms of government and different corporate powers. By requiring uniformity of charter provisions for municipalities of a given category, the classification system is designed to put an end to special legislation.

There is no consistency among the states following the classification plan.[9] The systems range from virtual uniformity with respect to corporate structures, as in Indiana, to allowing municipalities almost a complete freedom of choice with respect to forms of government, as in Wyoming and Alabama. In the last category, the classification system approximates one of optional charters.

With respect to corporate powers, generally, the distinction between classification and other states breaks down almost completely. In some instances, local powers vary directly with the size of the city. But the more common picture is a welter of general, special, and classified laws (the last showing wide differences with respect to the basis of classification within a single state) endowing cities with powers of various types according to no consistent system. This situation exists in classification and non-classification states alike.

Comment: Classification Charters

There can be little doubt that the classification charter system assists in preventing the evils of special charters, while at the same time preserving some measure of charter flexibility. Yet it is clearly unsatisfactory on both counts. On the one hand, no fewer than five of the twelve states in which charters by classification predominate have devised their systems so that only one city falls within one class. Under such circumstances, protection against the infirmities of special charters does not exist. On the other hand, needed flexibility in corporate forms and powers is by no means guaranteed by classification. The courts, generally, sanction classification only in accordance with

[9] Fourteen state constitutions authorize the legislature to classify cities for the purposes of general legislation. In four states the number of classes is limited to four. In several states (e.g. Kentucky and Minnesota), the classes are defined in the constitutions themselves.

population standards. To a certain extent municipal problems are conditioned by population. But a city's problems are also the result of geographic and industrial conditions, and classification cannot take these factors into account.

In the larger view, therefore, classification charters are only a short step forward from the undesirable special and uniform charter systems. In virtually no case does the system produce a stratification of cities by class, with a number of cities in each category, and with each possessing a corporate structure and corporate powers distinct from those of other classes. To the extent that classification charters free localities to meet their own problems and relieve legislatures from the burden of local laws, they are desirable. These results, however, do not necessarily accompany the system.

Comment: Optional Charter Systems

Municipalities are allowed a greater choice with respect to their form of government under a system of optional charters. Through this plan, nearly all cities are provided a choice among the three principal types of local government, and in some states a greater variety of choices is offered. Optional, like classification, systems exhibit wide variations.

In Massachusetts all cities except Boston have five choices of government, including two mayor-council plans, a commission plan, and two council-manager plans. In contrast, Idaho provides only the three standard forms of government, with mayor-council government mandatory and commission and council-manager government available by referendum to cities with a population of more than 2,500. In Kansas, Montana, New Jersey, North Carolina, North Dakota, South Dakota, and Virginia, the three standard forms are available to cities of all sizes. The choices with respect to corporate structures may or may not be accompanied by choices with respect to local powers.

The optional system has frequently failed to satisfy the demands of localities for a measure of local home rule. Even in Massachusetts, where the system has been worked out with a high degree of precision, cities have requested that their individual problems and preferences be recognized. In optional charter states, as a rule, cities continue to apply to the legislature for special concessions to alter the established options. As experiences in North Carolina and other states have demonstrated, there is a strong tendency for legislatures to drift back into the morass of special legislation.

On the other hand, some states have granted appreciable powers to localities by means of general, permissive legislation. This is notably true in Wisconsin and, to a lesser extent, in Washington, Nevada, and a number of other states.

Starting with a basic flexibility regarding corporate forms, the optional charter system is one on which a program of general optional laws with respect to corporate powers can be most suitably erected. This program is most adequately described as municipal home rule, legislatively derived; at the same time, the optional charter system has much to recommend it when used in combination with municipal home rule, constitutionally derived. Thus, the optional charter system may be the basis of a constructive and adequate system of state-local legal relationships.

Legislative Charters: The Central Problem

The distinguishing characteristic of the charter systems described thus far is the fact that all of them retain the complete dependence of municipalities upon state legislatures. Municipal impotence, as previously noted, results from (1) the principle that cities may act only as the state expressly gives them power and cannot act in the absence of that specific authorization; (2) the legal axiom of strict construction which produces the rule that a city will be declared without power when the existence of that power is doubtful; and (3) the right of states to assume the exercise of any power subject only to generally ineffective constitutional limitations.

By appropriate general statutes, legislatures can loosen the short restrictive rope that ties localities to the state capitals. In the majority of states this has not been done. Legislative charters have not sufficiently increased the discretion of municipalities to meet their day-to-day problems.

Abundant examples exist to show how hampering this may be to efficient local government.

In North Carolina (an optional charter state) a town had to have the legislature pass a special law in order that the council might declare it a misdemeanor to use roller skates, bicycles, or scooters on the sidewalks. In Maryland (a special charter state) a special statute was needed to increase the annual salary of a local government stenographer by $300. In Kentucky (a classification state) the city of Louisville found it necessary to secure a special law giving it authority to condemn property for off-street parking purposes; when city officials decided they wished to lease the property to private parking lot operators, a second law had to be secured. In Nevada a special act was necessary in order to purchase a rotary pump for the Goldfield fire department, and another to grant rights-of-way for power lines in Austin.

The question and answer columns of a single issue of the publication of the Iowa Municipal League illustrates the situation in that optional charter state. An official of one small town inquired if the town council might purchase

uniforms for the members of its police force; an officer of a second municipality wanted to know if the city had authority to assess property owners for the cost of paving a sidewalk which extended from the benefited property to the corner curb; a third town asked if it would be possible to raise the salaries of underpaid council members; and a fourth official inquired if city funds might be used to erect a civic plaque, listing the names of local men and women serving in the armed forces.

It would be difficult to find four spheres of governmental activity more purely local in character than police officers' uniforms, special assessments for sidewalks, the salary of city councilmen, and the erection of a war memorial. But, in each case, the city was advised that no state law existed under which the proposed project might be achieved. In each case, the inhibiting hand of the state can be clearly seen.

These restrictions do not apply only to small or medium-sized cities. Activities undertaken by a large city are tremendous in scope and ever-changing in pattern. As a consequence, the dependence of large cities on specific acts of state legislatures is an even greater burden than that imposed upon smaller localities. The situation of the city of Chicago well illustrates the point.

Chicago's charter is a vast document, containing more than 600,000 words. It details many functions which the city can, and cannot, perform. Its very length constitutes an impediment to local initiative. As the late Professor Ernest Freund remarked, "Since practically every charter, being a binding state law, constitutes in the absence of saving clauses a limitation, it follows that the volume of a charter is generally in an inverse proportion to the home rule which it bestows. It is indisputably clear that accretions to Chicago's charter have not kept pace with the city's needs. Chicago is severely limited in its power to initiate essential local services. There is almost invariably an interval of months or years between the recognition of a necessary municipal function by the city and its authorization by the state. This time lag is often embarrassing. It is never completely closed.

Thus, in the absence of a specific statute, Chicago was declared powerless to regulate the maintenance of refrigeration systems employing deadly gases. The city was likewise without the discretionary power to require the examination and licensing of automobile drivers. It was necessary for the city to secure legislative sanction when it desired to consolidate its twenty-two park districts, all of which were located within the city's boundaries. In the municipal tax crises of the 1930's, the city's Advisory Committee and Recovery Administration discovered that statutory enactments or constitutional amendments were required for each one of their detailed recommendations for relieving the city's financial distress.

In Nevada, both the Reno and Las Vegas city charters are very lengthy legislative acts, and similar problems have constantly arisen. In 1957, a fifteen page act was necessary in order to amend the Reno city charter so as to redefine the boundaries of the city, raise the salaries of certain city officers, change the qualifications of the fire chief, providing pensions for city employees, etc., and there are other amendments at every legislative session. In 1949 a thirty-three page act was necessary to amend the Las Vegas city charter on similar matters, and including the authorization to issue ordinances typewritten in pamphlet form as well as printed in book form. A large portion of this act is devoted to renumbering sub-sections.

Impediments to Council-Manager Government

A final limitation of legislative charters must be emphasized. This is the manner in which council-manager government for cities is discouraged in some states.

Experience with council-manager government has demonstrated the utility of this form of local government. An intensive study of fifty cities with manager governments has indicated that "general governmental improvements... followed the adoption of the city-manager form of government." Among other things:

> By comparison with the preceding forms of government, the city-manager plan brought a diminution of partisan or factional influence over the government... The city managers improved the organization left them by the preceding forms of government. They... brought about far more coordination in their governments than had existed before. The opportunity to concentrate leadership of administration in one person was one of the most conspicuous improvements...
>
> The city manager furthered long-range planning in city government and encouraged the employment of experts to advise cities on technical problems. The city-manager plan brought about conspicuous improvements in personnel administration...
>
> The establishment of the city-manager plan increased the prestige of the council and improved the status of expert administration in municipal government.

In spite of this record, the right of cities to institute council-manager government is impeded, to a greater or lesser degree, in twenty-one states by a bewildering variety of restrictions.

In twenty-seven states, no such impediments exist and council-manager government is legally available to all localities. Council-manager government is available only by special legislation in seven states. Other states set minimum or maximum populations, or both. In Nevada the council-manager government is available only to

the cities of Reno and Las Vegas in accordance with special provisions in their charter acts.

Louisiana requires a municipality to have more than 5.000 population before becoming eligible for council-manager government. Illinois does exactly the opposite: only cities of less than 5,000 can enjoy a manager. Alabama strikes an unhappy medium: city-manager government is available only to those municipalities ranging in population from 2,500 to 15,000.

There is a similar lack of consensus in other states. South Dakota sets 500 as the munimum population for council-manager government; in Idaho the minimum is 2,500; in Arizona 3,500. New Mexico places the minimum limit at 3.000. Kentucky allows manager government to cities between 3,000 and 20,000. Arkansas to cities between 2,500 and 50,000. South Carolina squeezes hardest. limiting managers to cities between 2,000 and 4,000. In Indiana, council-manager government is altogether unavailable.

These population limits may be contracted or expanded through exceptions in both law and practice. Thus, Massachusetts does not allow her largest city to have a manager. Louisiana similarly bars New Orleans, and other cities in the state find it difficult, if not impossible, to acquire a manager because of the necessity of obtaining an excessive number of signatures on a required petition. On the other hand, a number of cities have instituted manager governments by simple local ordinances in spite of the fact that there is no legislative provision for such governments.

Legislative Charters: Some Conclusions

It has been pointed out that many states neither provide efficient administration for local governments nor allow those governments the freedom necessary to carry on that efficient administration themselves. Action in both directions was suggested, namely (1) that state administrative and planning techniques be improved to the end that programs operated or supervised by state officials would meet well-accepted criteria of efficiency; and (2) that a field of discretion be maintained for localities in which local talent and local initiative would have free play. The discussion has revealed that the freedom denied localities results from the legal doctrine that, in the absence of constitutional provisions, makes localities completely dependent upon states for corporate authority. Many state legislatures have not endowed municipalities with the power they need to meet their day-to-day problems. But what legislatures have failed to do, they may still accomplish. It may be concluded:

1. Special charters and special laws are an undesirable means of giving corporate existence and corporate authority to localities. Special laws (whether so named or in the guise of classified statutes) have the advantage of flexibility. But this system of law, as practised in this country, has so many inherent defects that it should be discontinued wherever possible. When used, special laws should be preceded by adequate notice to the locality concerned, and procedures should be established by which affected citizens and local officials can express their views.

2. The discretion of local governments should be increased to permit them to make decisions now made through statutes. One feasible means of increasing local discretion is through a system of optional charters and general, optional laws. (A second feasible method is that of constitutional home rule, discussed in the next section).

3. Adjustments in legislative procedures can be used to achieve the desirable general law system. These adjustments are available to all states. They have pertinence not only for those nine states which operate under special charter systems, but also to the much larger group of states in which special, local laws in some form still constitute a substantial proportion of the legislative product:

A. A general grant of authority may be given by state law to municipalities, authorizing them to establish and to supply services for the general welfare of their communities within limits established by state law.

B. Existing special, local laws can be examined and tabulated to find those subjects with which such laws are frequently concerned. The passage of general laws granting all localities authority to deal with these problems would then have the dual effect of (a) forestalling the passage of subsequent special laws; and (b) endowing all localities with a scope of power.

C. The same effect can be achieved over a period of time in a piecemeal fashion by meeting requests for special laws with general statutes. In this way the immediate demands of a given locality can be met while similar special acts for other localities will not become necessary. At the same time, a measure of local authority will slowly accumulate.

D. In a number of states local legislation is fostered by the legislative representatives of each locality acting as a committee to originate and to review statutes for that locality. The provision of a single standing committee on local government would substitute a general, for a local, point of view and would undoubtedly have the effect of decreasing local legislation.

E. Reference of local bills to legislative councils would similarly result in a decrease of local legislation and an increase in general laws. At the very least, the council could be charged with (a) eliminating local laws that are unnecessary because of existing statutes: (b) combining local laws on the same subject; (c) preparing general laws whose necessity is suggested by proposals for special laws; (d) preparing bills to eliminate obsolete and superfluous local laws; (e) analyzing the existing body of local laws with a view to suggesting the substitution of general laws

and the codification of municipal statutes, generally.

4. The establishment of a state office to study local affairs would be of material assistance in carrying out this project for endowing localities with authority through general laws.

5. This program of internal self-reform by a state legislature has much to recommend it. It may be an effective step in the direction of constitutional home rule. It is superior to the imposition of drastic constitutional limitations against special and local laws. The latter limitations should be approached cautiously. They are relatively ineffective unless balanced by appropriately broad powers for localities either through general laws or home rule.

6. With respect to corporate structures, a minimum program can be categorically stated: All states should make the three major forms of city government (mayor-council, commission, council-manager) available to all cities, irrespective of size.

In sum, this section has pointed out some deficiencies of current legislative practices in the use of special charter and classification systems, in the utilization of special laws whatever their disguise, in the failure to make manager government universally available, and in the refusal, generally, to endow localities with sufficient discretionary authority. It was concluded that the most feasible legislative charter system was one that approximates optional charters supplemented by optional general laws. Such a system, no matter how liberal it may be, suffers inevitably from the fact that localities remain dependent upon legislative authorization to a greater extent than localities operating under some systems of constitutional home rule. But, as the next section shows, home rule plans have their own deficiencies.

An outstanding advantage of the scheme of general optional laws is that it may be almost completely implemented by legislative action alone. Through it, municipalities may be freed in large measure to pursue vigorous local government; state legislatures may be left with their proper task of creating state-wide laws.

Municipal Home Rule

Howard Lee McBain has provided the standard definition for municipal home rule:

> Broadly construed the term "municipal home rule" has reference to any power of self-government that may be conferred upon a city, whether the grant of such power be referable to statute or constitution. In American usage, however, the term has become associated with those powers that are vested in cities by constitutional provisions, and more especially provisions that extend to cities the authority to frame and adopt their own charters...

In other terms, home rule simply means that localities are granted a limited degree of local autonomy. Though the concept of "legislative home rule" has now gained common usage, grants of power by legislation may be cancelled by legislation. Consequently, a necessary attribute of home rule, accurately defined, is that the delegation of power shall be embodied in the constitution.

The phrases "home rule" and "self-government" are both misleading when applied to local units of government. The narrow interpretation traditionally given to municipal powers has been carried over in the judicial review of home rule authority, and court decisions generally have the effect of confining home rule to a narrow scope. Even if this were not so, it is obvious that self-government as it applies to municipalities can be no absolute concept. Municipalities cannot disengage themselves from the larger state and federal mechanisms. They cannot be freed from constitutional obligations or from the numerous legislative demands that make it necessary for them to provide educational facilities, public protection, judicial processes, and a multitude of additional services.

Home rule is therefore a relative matter. It calls for local self-government (i.e., freedom from legislative dependence and from legislative interference) in limited fields only.

The Home Rule States: An Overview

Localities in different states do not, of course, receive a uniform scope of even limited discretionary powers as the result of constitutional home rule provisions. In five of the eighteen states with constitutional home rule, the system operates with indifferent--or no--success. In (1) Pennsylvania the constitutional provision has never been implemented by the necessary enabling legislation, and Pennsylvania municipalities actually operate under a rigid classification system. In (2) Utah no cities have made use of the home rule amendments. In (3) West Virginia, only one city reports adoption of a home-rule charter; present statewide property tax limits, coupled with the powers granted home rule cities to levy numerous local taxes, render the home rule provisions almost inoperative. In (4) Maryland home rule extends to only one city (Baltimore), which has adopted its own charter, and to the twenty-three counties, none of which has made use of the privilege. As for the city of Baltimore, the sphere of home rule is so narrow, the convention of local legislation so well established, and the decisions of the courts so limiting that home rule is a legal shadow without functional substance. In (5) Missouri, under the old constitution, home rule was granted only to Kansas City and St. Louis; here, too, the grant of power has been

largely vitiated by joint operations of the legislature and the courts.

In the remaining thirteen states, home rule operates somewhat more satisfactorily. That comparatively few municipalities have adopted charters in Nebraska, Arizona, Washington, and Colorado is apparently the result of a relative satisfaction with existing charters, rather than the result of deficiencies in the home rule acts, themselves. Washington makes home rule available only to cities of over 20,000 population, but the state legislature has increasingly broadened the authority of localities by general statute. No Wisconsin city has adopted a complete charter, but cities have frequently invoked the separate home rule charter-amending process. This partial charter-making power, plus an exceedingly liberal system of general laws, gives Wisconsin municipalities a scope of discretion equalled in few (if any) other states. Numerous localities in the other states, ranging from more than thirty in Ohio to more than a hundred in Oregon, have taken advantage of home rule charter-making provisions.

In Nevada there are comparatively few (15) incorporated municipalities, the unincorporated towns being governed by the county commissioners through the authority of general laws. Relative satisfaction with existing charters, plus the need of new, streamlined, modern, permissive laws authorizing incorporated cities to have their choice of the mayor-council, the commission, or the council-manager types of government have limited the number of incorporated cities under general laws to the small total of eight.

What are "Municipal Affairs"?

The home rule constitutional provisions variously define the scope of home rule. The original Missouri provision set forth that a city of a given size might frame a charter "for its own government." This language was copied by a number of other states including Washington, Minnesota, Oklahoma, Arizona, Nebraska, and Utah. In California, localities are given the right to make and enforce all laws with respect to "municipal affairs"; Colorado uses the term, "all local and municipal affairs"; Wisconsin, "local affairs and government"; Ohio, "local concerns"; and New York, "property, affairs or government."

It will be noted that every one of these terms is general and vague. The terms "local" or "municipal" affairs have no well-understood generally accepted technical meaning. It is an astonishing fact that though the home rule movement is seventy years old, no definition of what may properly be called "municipal affairs" has been evolved.

Some practical definitions of home rule power have been made. In both California and Colorado, for example, constitutional amendments have conferred specific powers on localities after such powers had been declared by the courts outside the scope of the original general grant of power. The unnecessary delays involved in such a process are obvious. The constitutions of Oklahoma, Michigan, Ohio, Utah, and New York also contain some degree of specification. Furthermore, the enabling acts of such states as Minnesota and Texas establish what amounts to a legislative definition of "municipal affairs."

The Scope of Authority Enjoyed by Home Rule Localities

The looseness of the definition of "local affairs," combined with the practice of narrow judicial construction, has resulted in an uncertain grant of discretionary powers to home rule municipalities. A suggestive study in 1938 tentatively concluded that home rule, with little exception, had been "helpful but not of great importance in enlarging the zone of municipal activity." A retabulation of the materials presented, however, indicated that home rule cities, as a whole, possessed a greater range of powers than cities without home rule. Thus, of the thirteen states with actively operating home rule systems the cities of ten possessed at least twenty-one of the twenty-seven powers analyzed. Only three cities of the remaining thirty-one states possessed that many powers. None of the cities in the active home rule states had fewer than sixteen powers, while cities in nineteen other states were in this category. On the other hand, the cities of three states without home rule had more powers than the cities in four of the thirteen active home rule states.

Generally speaking, it is probably true that home rule cities enjoy the least advantage in the financial field. In common with other states, home rule states have imposed drastic debt and property tax limitations and the courts have generally held home rule cities subject to these limitations. An exception to the general practice is the situation of Michigan home rule cities under the over-all property-tax limitation. But home rule cities in Ohio have been held subject to state regulation with respect to both tax limits and debt limits, and this regulation has gone as far as limiting the purposes of debts, their methods of contracting and payment, and even to regulating the procedure of ordinary municipal purchases. Cities under home rule are generally prohibited from imposing taxes upon occupations already subject to state taxes of the same type. California probably gives the greatest scope of discretion to localities in this field, and cities with home rule probably have greater general discretion in such matters asspecial assessments and budgetary procedures than cities without home rule.

With respect to general substantive powers, home rule cities are more free in certain purely local matters such as control over parks, playgrounds, streets, sewers, housing, building regulations, and zoning. But their freedom is

not measurably greater in matters of education, general police control (except for an ill-defined sphere of "local police power"), and utility rates and services (except in Colorado).

In the field of what might be called local house-keeping functions, home rule cities enjoy the greatest advantage over cities without home rule. Cities under home rule generally have full authority to consolidate departments and to create new ones without legislative permission. They may change the number of councilmen, the method of representation, the election system, the plan of government; they may institute civil service systems, extend or restrict their application, and fix salaries, wages, and pensions. In all of these fields cities without home rule are dependent upon enabling legislation.

It is not frequently understood that general laws may be an important source of municipal discretion in home rule states. The outstanding example is the situation in Wisconsin, whose cities probably enjoy greater freedom than the cities of any other state. Wisconsin has a home rule constitution provision; but the scope of discretion possessed by Wisconsin cities results not from this provision but primarily from an exceedingly liberal system of general statutes. This is true, to some degree, in a number of home rule states. The very existence of home rule constitutional provisions may tend to promote a liberal legislative attitude with respect to general laws, but this cannot be demonstrated. In any case, the Wisconsin system of home rule fortifies one previously made point: that general laws can be an important source of municipal freedom. At the same time, localities even in Wisconsin make free use of their home rule charter amending powers. And this illustrates one practical advantage of constitutional home rule over even the most generous legislative charter systems: namely, the advantage of flexibility that home rule gives to localities in meeting their day-to-day problems.

The Place of the Legislature in Home Rule Systems

The legislative disinclination to define any sphere of municipal discretion in Pennsylvania and a legislative penchant to control every aspect of local government in West Virginia account for the failure of home rule in those two states. But it is overhasty to conclude that home rule can be successful only through making constitutional provisions completely self-executing and only through completely removing the legislature from exercising authority in certain (or all) aspects of municipal affairs.

The constitutions of Minnesota, Michigan, and Texas, for example, grant home rule powers directly subject to legislative definition. The Minnesota constitution authorizes the legislature to "prescribe by law the several limits under which...(home rule) charters shall be framed"; the Texas constitution provides for the erection of home rule charters "subject to such limitations as may be prescribed by the legislature..."

In these states, home rule is obviously measured only in terms of legislative enabling statutes, and local discretion can be exercised to the extent it is permitted--or not prohibited--by general laws. Despite legislative dominance, home rule has operated creditably in Texas, Michigan, and Minnesota.

Even where the legislature is not given a direct constitutional mandate to set the limits of local home rule, it may exercise such a function. This is accomplished as the result of constitutional clauses providing that activities of home rule localities shall be "consistent with and subject to general laws of the state." In the state of Washington, for example, localities are free to regulate their own local affairs (and "local affairs" are narrowly defined by the courts) until the state legislature occupies the field by general law. Nor is there any sphere of function, no matter how local in character, immune from general laws. By this process, as McBain has said, home rule becomes "more largely a matter of legislative grace than a constitutional right."

A basically similar situation exists in both Oregon and Missouri. The difference between the rudimentary development of home rule in Missouri (under the old constitution) and the well-ordered system in Oregon results from the attitude of the courts, the custom of the legislatures, and the watchfulness and political strength of home rule municipalities. These differences do not result from the constitutional provisions themselves.

Legislative Control Minimized

Home rule thus operates with some satisfaction under direct legislative control in some states. It also operates effectively where legislative powers are more rigorously curtailed.

In some states this has come about purely as the result of court decisions. The text of Oklahoma's constitutional provision, for example, is identical with that of Missouri and similar to that of Washington and other states in providing that a city "may frame a charter for its own government, consistent with and subject to the constitution and laws..." Contrary to the practice in Washington and Missouri, the Oklahoma courts have consistently held that in matters of "purely municipal concern" action of a city under a home rule charter prevails in the face of state law.

In three states (Colorado, California, and Ohio) an attempt was made in the constitutions to remove local affairs of home rule localities from the purview of general legislation dealing with local affairs. The Colorado constitution goes further than any other in establishing independent localities. It provides that the charter of a home rule city shall "be its organic law and extend to all its local and municipal affairs" and "shall supersede within the

territorial limits...any law of the state in conflict therewith." The constitution affirms that "it is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters..."

The Colorado courts speedily provided a corrective to this provision by declaring home rule cities amenable to general laws having to do with general, as opposed to local, matters. At the same time, the courts of the state have consistently maintained the "absolute freedom /of home rule cities/ from legislative interference in matters of local concern."

New York and Wisconsin, two of the newer home rule states, have attempted to limit legislative interference in the affairs of home rule localities while simultaneously leaving no doubt as to the ultimate supremacy of the legislature through genuine general laws. This has been done through specific constitutional definition of the term "general laws" so that it may not be eroded by legislative classification. The Wisconsin provision states that home rule charters are "subject only to this constitution and to such enactments of the legislature of statewide concern as shall with uniformity affect every city or every village. In New York, the same end is sought with the negative statement that "the legislature shall not pass any law relating to the property, affairs or government of cities, which shall be special or local either in its terms or its effect" (except upon the declaration of an emergency by the governor and the two-thirds vote of the legislature).

Thus, in both of these states, the legislature is specifically entrusted with the power to legislate with respect to local affairs through general laws which cannot be diluted by classification. In those states, i.e. Colorado, in which cities are granted an exclusive grant of power with respect to "local affairs," those affairs are apt to be very narrowly defined by judicial interpretation. The New York and Wisconsin provisions do not strain the system to such an extent, but openly recognize the primacy of the state when that primacy is exercised through genuinely general laws. As McGoldrick has pointed out, this is consistent with the aims of the home rule movement. "If the legislatures of these states are carefully confined to uniform legislation on municipal affairs--whatever the term comes to include--the cities can be certain that the volume of such legislation will not be large or its character oppressive."

It may be added that the Wisconsin provision is superior to New York's. The emergency clause of the latter opens the way to special legislation. As experience has shown, "emergencies" can be loosely defined, and the legislature has shown itself more than willing to cooperate in the passage of special laws on the statement of a purely fictional emergency.

To summarize: It is clear that in many states municipal home rule rests in large part on legislative discretion. In only three states (Colorado, Ohio, and California) have constitutional provisions effectively removed an ill-defined scope of "municipal affairs" from the power of the legislature. In several other states (notably Oklahoma) the same approximate result has been achieved through a liberal judicial interpretation of the constitutional proviso that home rule powers must be "consistent with the general law." But in other home rule states, legislative supremacy is assured. In Texas, Minnesota, Michigan, and Pennsylvania, the legislature derives its authority directly from the constitution. In Oregon, Missouri, and Maryland, this situation has come about as a result of a conservative interpretation of the "general law " provision. In New York and Wisconsin, legislative supremacy is assured, but severely limited, as a result of specific constitutional definition of the term "general laws" which excludes possibility of classification.

The Courts as Arbiters of Home Rule

The architects of every home rule system have left to the state courts a large part of the task of actually defining home rule. Two types of overlapping ambiguities exist in the home rule provisions. The first applies to all those states whose constitutions do not specifically remove the legislature from the domain of local affairs and centers around the requirement that local charters and ordinances must be consistent with the "general laws." The second ambiguity is universal and concerns the definition of "municipal affairs."

The term "general laws " may be variously interpreted. It may mean laws of general concern, as opposed to municipal concern; or laws of general application, as opposed to special application. Or it may mean laws of both general concern and general application. To complicate the situation further, even laws of general application need not apply to all municipalities since a classification of cities may produce the anomaly of a general law applicable to a single municipality.

It is obvious that in all states general laws of general concern (i.e., general laws not relating to local affairs) are binding upon even home rule municipalities. This rule is stated explicitly in the California constitution. It has become clear in other states through judicial interpretation. Where ambiguity existed with respect to the point, as in Colorado, the courts have speedily brought clarification.

The categorical statement that home rule cities are subject to general laws of general concern does not, unfortunately, resolve many difficulties or decrease the task of the courts as arbiters of home rule systems. The courts are continuously called upon to adjudicate whether classified laws meet the standards of general laws. In a majority of home rule states, the courts further must decide whether or not general laws of local concern are binding upon municipalities.

Finally, and most importantly, there is a wide no man's land between affairs of "municipal" and of "general" concern, and the judiciary has the largest task in assigning functions to one of the two categories.

All this has led to continuous litigation and to great uncertainties for home rule cities. It has also delivered to the judiciary the final word on the operation of home rule. Under the current scheme of things, the term "constitutional home rule" is a misnomer. In most states, a more accurate designation would be "judicial home rule."

Yet the powers that a home rule municipality should exercise are a matter of political policy, not law. Legal training gives one few qualifications for distributing functions between states and localities. No practice is more ill-suited to that task than the judicial process of abiding by precedent. Any system of allocating powers between states and localities should aim at reducing litigation to a minimum. But home rule, as practiced today, puts the largest burden of defining "home rule" in the hands of the judiciary. This makes for neither good government nor good law.

A Larger View of Advantages

Thus far, the discussion of home rule has been limited to the details of its operation. From a larger viewpoint, home rule offers many advantages if its mechanical details can be successfully solved. (This assumes political friendliness; even the best technical provisions can be made inoperative by political hostility.)

A home rule charter is best calculated to give the people of a given city the form of government they consider best suited to their own need. The basic construction of local government is left in the hands of those directly governed. This technique has a practical advantage: the city's charter may be uniquely fitted to the city's needs. And a locally constructed charter puts an end to log-rolled charters and to charters planned for a group of cities without fully meeting the problems of any single city. Home rule charters offer the greatest measure of local self-government possible under the American system of government.

There is often a genuine need for local laws. In effect, home rule gives municipalities the power to pass wi- thin limits) local laws for their own use, while simultaneously freeing the legislature from this burden and freeing the municipalities from legislative abuses inherent in the practice of local legislation.

Most important of all, home rule gives a much needed power of initiative to municipalities. The original constitutional provision, the activity of the legislature, and the dicisions of the courts, singly or in combination, set the limits to which this local initiative may be put. Within these limits, however, local discretion with respect to local matters has free play. Localities are emancipated from the doctrine that each of their acts must spring from a specific statute. Day-to-day problems may be met without waiting for permissive legislation.

Home Rule: Some Conclusions

It may be concluded that home rule is one satisfactory solution to the problem of state-local legal relations.

There are many difficulties in creating a workable system of municipal home rule, but current home rule systems may certainly be made to operate more effectively. The following points suggest methods by which this may be accomplished:

1. The Partial Definition of Local Affairs

The greatest difficulties of municipalities in home rule states have resulted from the fact that grants of home rule powers have been made in general terms. It is precisely because of this fact that the courts have been called upon so frequently to clarify the extent of home rule powers. This process, in turn, has led to expensive litigation, delay, and uncertainty.

It is difficult, as this report has emphasized, to separate state from local functions. A complete specific enumeration of powers to be exercised by home rule cities is therefore impossible. Nevertheless, it seems both possible and highly desirable that some specified powers be given to localities in addition to the general grant of authority over local affairs. Rather than leaving the entire field of home rule powers to the definition of the courts, there seems no valid reason why an enumeration of powers cannot be conferred upon cities in every home rule state. In the process of this enumeration, those powers which have been the cause of the greatest litigation in the past could be carefully considered. As a matter of public policy, they can be granted or denied to home rule localities.

2. Legislative v. Constitutional Definition

Specification of home rule powers is not without danger. If accomplished in the constitution, the danger is that the enumeration may be inadequate to meet future needs, yet inflexible and difficult to alter. If enumeration is left to legislatures, the danger is that municipal freedom may be completely usurped by an unfriendly law-making body . The case against constitutional elaboration is a strong one: no system of government can be better than the men who operate it, and the legislature, in any case, will have much to say with respect to a given municipality's powers. Nevertheless, some constitutional enumeration is advantageous, especially if care is exercised to include therein only those matters which are likely to remain within the realm of purely local affairs. It is to be

emphasized that this specification should be in addition to a general grant of authority, coupled with the proviso that the enumeration should not be interpreted to limit this grant.

3. The Place of the Legislature

This, of course, will leave an undefined sphere of "local affairs," subject to judicial construction and to a constitutional provision with respect to legislative powers. The latter may take two forms that are consistent with the philosophy of home rule: the legislature may be completely barred from the undefined sphere of municipal affairs, as in Colorado; or it may be permitted to control that sphere by general law, as in Wisconsin and New York. In the former case, the courts are again called upon to play a dominant role and "local affairs" are apt to be squeezed dry through the judicial wringer. Thus, it seems desirable to endow the legislature with power to enact general laws in the undefined sphere of local affairs. This power to use general laws can, with advantage, even be extended to the sphere of the enumerated local powers as in Wisconsin and New York. Under these circumstances, the enumeration can be made more complete since it will not be completely inflexible.

A pattern to be avoided is one in which the localities are dependent upon enabling legislation. This situation (which exists, for example, in Michigan) may provide a liberal scope of local discretion. To the extent that it does, it is to be praised, just as all systems of liberal general laws are praiseworthy. But no matter how liberal it may be, it still binds localities to specific enabling statutes. In such a system, the cities lose one of the most valuable attributes of home rule, i.e., that of freedom of initiative in local affairs.

4. The Definition of General Laws

The wide scope of authority allowed legislative bodies through general laws can be justified on the grounds of the growing state concern in matters once conceived to be purely local in character. At the same time, some safeguard should be erected so that legislative classification cannot reduce home rule to an empty shell. To this end, a constitutional definition of the term "general law" should be supplied. The Wisconsin provision, copied in the latest revision of the Model State Constitution of the National Municipal League, has much to recommend it. It permits legislation, no matter how local in character, "as shall with uniformity affect every city or every village." Thus, cities are protected against special legislation in any disguise, and this protection is ample to protect them from undue legislative interference. The device of classification, which at one time threatened the success of home rule in both Minnesota and Washington, is completely closed.

5. Balancing Legislative Prohibitions with Local Initiative

In a previous section, it was pointed out that stringent constitutional provisions with respect to absolute requirements for general laws have generally been unsuccessful. This was largely so because they were accompanied by no positive grants of power to localities, which resulted in the judicial expansion of the concept of "general law" and the judicial contraction of the scope of "local affairs." The recommendation for general laws, stated above, avoids the vacuum created under the old prohibitions. Prohibitions with respect to legislative powers are balanced by authority granted to localities. This balance is a prerequisite to successful home rule.

6. Distinctions Between Home Rule Cities and Non-Home Rule Cities

In several states, the privileges of home rule are at least partially granted to all cities, irrespective of whether they have adopted home rule charters. This is notably so in Ohio and Wisconsin though the use of charter making powers in both of these states increases the scope of free local action. On the other hand, considerable confusion exists in a number of home rule states with respect to (a) the distinction between home rule and non-home rule cities and (b) the degree of authority of the legislature over each of these groups. For one example, the confusion may lead to the splitting of ordinary classifications into two parts (e.g., cities with and without home rule), thus measurably adding to the possibilities of special legislation. Other complications exist. Without detailing them, it may be concluded that there is no necessity for such confusion, that clear definition can be readily supplied, and that the Wisconsin and Ohio patterns have much to recommend them in so far as all localities benefit by reason of home rule.

7. Combining Home Rule with Optional General Laws

The Wisconsin model provides still another instructive example. There the liberal system of general laws brings benefit to all municipalities, while home rule, when exercised, adds a needed reserve of initiating powers. Such a combination of home rule and optional general laws is productive of many benefits to both states and localities. A wide range of local freedom is retained even without the adoption of home rule charters. This is of special value to the smaller cities.

8. Minimizing the Role of the Judiciary

The total effect of the points above will minimize the judicial definition of home rule. The courts must inevitably play some role. Yet it may be categorically stated that, other things being equal, a decreasing reliance upon judicial processes will result in the greater effectiveness of home rule.

State-County Legal Relations

A legal distinction is sometimes made between municipal corporations (cities, towns, villages) and quasi-municipal corporations (counties, townships). The principal difference between the two apparently lies in the manner of their creation. Municipal corporations are voluntarily formed; they perform functions in their own local interest and at the same time act as administrative arms of the state. Quasi-municipal corporations (counties) are involuntarily formed and function only as administrative units of the state. The distinction is not an important one, though it generally has the effect (as in Illinois) of freeing a state legislature in its relations with counties from constitutional restrictions placed upon it with respect to municipalities. The distinction, furthermore, is breaking down. There are numerous indications of an increasing tendency to regard the county as a joint instrumentality of the locality and the state. State constitutional provisions impose important limitations on the power of legislatures over counties. Counties are regularly subject to suit in cases of contract and, in an increasing extent, in cases of tort. In recent years, counties have increased the scope of local service activities, branching out into the operation of waterworks, libraries, hospitals, parks, and airports. At the same time, state supervision has been more and more extended to cities as well as to counties. As the result of this dual development, the actual difference between cities and counties has decreased, and this fact has been reflected in the tendency to look at the two forms of local government as legally similar.

County Government: Constitutional Rigidity

Organizational defects of counties in the United States are so great that they serve as genuine barriers to effective government. In the vast majority of counties, the government has no central legislative body which is elected by all the voters of the county and responsible for the conduct of county affairs. Responsibility is diffused among a large number of independently elected or appointed officers and boards. The election of technical, professional, and clerical officers makes unified government impossible. The same considerations thwart proper budgetary methods and the institution of modern accounting, auditing, or purchasing systems. The diffusion of official responsibility makes it impossible for citizens to understand the mechanism of their county government. They have no way of knowing who is to be praised for efficiency or blamed for inefficiency. Because county government is unresponsive to public control, it is undemocratic.

To a large extent, these defects in county government are planted in state constitutions and therefore it is difficult to correct them. The best case in point is the fact that large numbers of elective county officials are specifically named in constitutions. As Howard P. Jones has said:

> Where these officials are numerous, no satisfactory alteration in the form (of county government) can come without constitutional amendment. It is obviously impossible to obtain vigorous administration with most of the administrative officers running their own affairs in their own way and responsible to nobody but a vast unorganized electorate or to a political machine which exists solely for the purpose of perpetuating them in office. Furthermore, the listing of these elective officials in the constitution prevents the establishment of optional forms of county government.

In a number of states, the constitutional provisions with respect to county officials create no serious problems. In at least twenty-five states, however, the constitutions specify that necessary county officers be elected (as in Nebraska and Wyoming) or actually name long lists of elective officials. Colorado, for example, requires election of the county judge, county attorney, school superintendent, commissioners, clerk, sheriff, justices of the peace, coroner, treasurer, surveyor, assessor, and constable. Kentucky makes mandatory the election of county court judge, court clerk, county attorney, sheriff, jailer (the legislature may consolidate the offices of jailer and sheriff), coroner, surveyor, assessor, anda justice of the peace and constable in each justice's district. In Texas the list extends to ten offices (in counties without home rule), in Arkansas to ten, in West Virginia to nine. In Idaho the legislature is prohibited from creating any county office in addition to the ten constitutionally specified. It is obvious that there are small chances for improving county government in these states until constitutional amendments make it possible to dispense with some of these independent offices.

A wealth of further constitutional limitations impedes modernization of county governments and effective exercise of control by the states over its principal geographic subdivisions. In many states, uniform county government is required; in others prohibitions against special legislation with respect to county affairs have, in spite of the flexibility of classification systems, impeded reorganizations; in still others, the constitutional specification of township government stands in the way of county improvements; there are numerous constitutional restrictions with respect to the creation, abolition, separation, and consolidation of counties. Further, legislatures are frequently constitutionally restricted with respect to the assessment and collection of taxes, debt and tax limitations, and other fiscal matters.

In Nevada Section 20 of Article IV specifically prohibits the legislature from passing special laws regulating county and township business, or regulating the election of county and township officers, or for the assessment

and collection of taxes for county and township purposes. or refunding money paid into a county treasury, or releasing any indebtedness to any county. But it declares that the legislature shall have the power to establish and regulate the compensation and fees of county officers, and to provide for certain other powers of county commissioners, all by uniform and general laws. Section 25 of Article IV orders the legislature to establish a uniform system of county and township government. Section 32 of Article IV declares that the legislature shall have the power to increase, diminish, consolidate or abolish certain county officers; such officers must be elective; and the legislature is required to fix their duties and compensation. Section 36 of Article IV prevents the legislature from abolishing a county until the matter has first been approved by the county affected.

Considerable constitutional rigidity is created by the aforementioned provisions in the constitution of the State of Nevada, and while some eighty-three general laws for the government of Nevada counties have been enacted, there has been little modernization of county governments. At the same time through the years there has been a large amount of special legislation pertaining to counties. little of which would be necessary with the proper constitutional provisions and modern general laws.

A prerequisite to any genuine progress in the reorganization of county government is the removal of this impeding constitutional underbrush. Once that task has been accomplished, action can be taken in any of several directions.

Plans for County Reorganization

One course of action might call for vesting full responsibility for county government within the hands of the legislature. This would mean leaving little consideration of counties in the constitutions themselves, and conceivably even giving legislatures full authority (with or without local referenda) with respect to the abolition or consolidation of counties. Under this system, the legislature would be free to re-mold archaic forms of government along modern lines. Legislatures could organize uniform counties or permit local experimentation, limit counties to the performance of specifically designated activities or endow them with discretionary authority. This system would be the frankest admission that the chief functions of counties--law enforcement, tax assessment and collection, highway construction, poor relief, public health administration, school management--are all activities in which the state inevitably must take an increasing interest and extend an increasing measure of control. This type of relationship is best suited to those states (North Carolina and West Virginia, for example) in which central authorities are going furthest in the assumption of administrative and supervisory services formerly carried on by the counties.

A second course of possible action lies in a grant of home rule to counties. Under a home rule plan, counties would be allowed to experiment with structural mechanisms and freed to some degree in meeting the increasing number of municipal problems that are coming within their jurisdiction. Even the most enthusiastic advocates of home rule, however, admit that it must be even more limited for counties than for cities. Thus, the Model State Constitution of the National Municipal League provides a series of elaborate safeguards for cities exercising home rule. While making county home rule also available, the model constitution provides that home rule powers shall be directly subject to legislative definition. The State of New York, which has perhaps seen the highest development of county home rule, similarly vests the state legislature with greater authority in county, than city, affairs.

The Increase of Legislative Powers

Though the respective merits of these two plans have been widely debated, they are similar in overcoming the inflexibility imposed on counties by present constitutional provisions. In both schemes, considerable power accrues to the legislature. The first plan would vest discretion primarily in legislative hands; the second would allow counties themselves to share discretionary powers with legislatures.

It is obvious that local conditions must determine in what manner a legislature will use its power. Where the state has assumed primary responsibility for the improved standards of administration in the basic functions of justice, health, schools, roads, welfare, and police; and where county areas are so poor that this central administration is essential if government is to function with any degree of satisfaction, home rule is unnecessary and unworkable. On the other hand, in relatively wealthy counties where functions are as diversified as those in a large city and where sufficient area and wealth allow a full program of governmental activities, there is much to be said for some measure of home rule under legislative definition. Since most counties fall in the first categories and since there are great differences in the wealth and area of counties of every state, state legislatures are certain to exercise greater and greater controls.

Experience in County Reorganization

Thirteen states now authorize county home rule or optional forms of county government: California, Georgia, Louisiana, Maryland, Missouri, Montana, New York, North Dakota, Ohio, Oregon, Texas, and

Virginia. Wisconsin gives home rule to the county boards in regard to internal administrative matters, but full home rule or optional forms of county government are not authorized. The enabling legislation thus provided has suffered from disuse. In 1939, New York was cited "as the outstanding example of the success of county home rule." But the same article contained the information that "no county in the state has adopted a charter under any of the three laws passed [up to that time] to implement the county home rule amendment. Though New York's several county home rule laws now provide almost an endless number of options, only three counties have yet taken action. Throughout the country, generally, counties have been slow to respond to the necessity or reorganization. By March, 1946, only nine counties had adopted the manager form of government. A wide variety of other forms has been utilized to replace the traditional county structures. Nassau and Westchester counties in New York, for example, having systems that approximate the strong mayor form of city government. In California, nine counties operate under home rule charters, only two of which follow the conventional manager plan.

Generally speaking, the reconstruction of county government to give it greater centralized leadership has achieved significant successes in those places in which it has been tried.

The successful, if limited, experience of counties under newer organizational schemes (some of which have been accompanied by an increase in county discretion) has been matched by successes following a high degree of state centralization. This tendency, generally, has progressed much further for counties than for cities. Where the trends have progressed furthest, as in North Carolina, state administrative supervision has proved efficient and economical.

The common feature of both the county manager and the centralization scheme is the rationalization of organization. In the former case, this process comes primarily within the county itself. In the latter, county officers may be divested of their functions, their independence, or both, and the lines of authority drawn directly to central state agencies. In either case--and the point bears repetition--the way must be cleared for remedial action by removing the dead hand of constitutional inflexibility.

Conclusions: The Orientation of State-County Relations

Recent years have seen the dual development of (1) counties expanding the scope of their service and (2) states expanding their supervision over counties. The coordination of state and county efforts and the assumption by counties of township functions has generally led to a growing importance of county governments. Legal relationships have not kept pace with these functional trends.

It may be concluded that the most important legal change needed is to free legislatures from the numerous constitutional provisions that restrict their activity in dealing with county matters. Once legislatures possess sufficient powers with respect to county organization, action should be taken:

a. To transfer local policy-making functions from the large number of existing officers and boards to a single elected policy-making body.

b. To transfer administrative functions, now performed by independent officers and boards, to officials appointed by the central county group, or by its own appointed executive. This involves the departmentalization of county work under competent officials who are responsible through the executive to the legislative body; and the abolition of all offices paid by the fee system.

c. To provide those counties, possessing sufficient area, population and taxable wealth, a grant of discretionary power under legislative definition and subject to local option.

d. To establish flexible administrative machinery by which state agencies may properly integrate state-county programs and may encourage and enforce adequate administrative and fiscal methods at the county level.

The virtue of the suggestions outlined above is that they make it possible for flexibility to exist. They remove the rigidity of constitutional fiat. They vest responsibility within the legislature, where it belongs. They allow the legislature to meet various conditions with a variety of solutions. They encourage a more extensive state-wide integration of services. while simultaneously they make possible a fuller local self-government, where conditions are favorable for that self-government.

CHAPTER IV

CONDITIONS NECESSARY FOR EFFECTIVE HOME RULE, AND ADVANTAGES OF HOME RULE

A study of the twenty-one states which have extended some type of home rule to their cities reveals that certain social conditions are more important in securing effective home rule than are the precise constitutional provisions which have been adopted. Similar constitutional clauses have produced different results in different states. While the importance of a workable legal basis for home rule should not be underestimated, it is quite as necessary to recognize that there are other factors in the situation which may materially affect the results. Those states in which home rule has been most successful have been able to develop a favorable attitude toward it in the legislatures or in the courts. Even though a constitutional provision is designed to be self executing, there are numerous ways in which its implementation may be assisted or hampered by legislative action. Under any arrangement, local autonomy is likely to be but partially attained unless the law makers develop confidence in the ability of cities to manage their own affairs.

In view of the fact that the constitutional and statutory provisions for home rule must be interpreted by the courts, it is evident that they are in a position to make the path of the city smooth or rocky. Unfortunately, the judges in a number of states have taken a dim view of municipal self-government. The state's supreme courts quite naturally have a state point of view, and attempts by the cities to expand their services are often regarded with suspicion. Unless this attitude can be changed, home rule is likely to be but partially successful at best. In part, this attitude of the courts grows out of the instruction the judges have had in their college and law school days. In part it grows out of the conservatism of the law, especially in view of the traditional rule that powers of cities are to be construed strictly in favor of the state and against the city. The problem of judicial attitude is not one which can be changed by simply enacting a constitutional provision, although a carefully worded directive for its interpretation may help in bringing the changes about.

As a minimum the courts should be instructed to interpret the home rule provision liberally to secure maximum of powers to the cities, and they should be enjoined to view any specific grants of powers as examples rather than the complete list of powers given the cities.

It is a significant fact that municipal home rule has proved most successful in those states in which there is an effective and aggressive league of municipalities. In the last analysis, the cities must fight their own battles for a fair share of political power. Unless cities are alert to their political position and responsibility, it is hardly to be expected that the states will give them what is desired. The most effective way in which the cities can make their wishes known is through their own state organization. This organization is important both in the struggle to secure a home rule clause, and in the subsequent efforts to prevent its attrition by legislative or judicial action.

A final condition which is necessary if home rule is to be truly effective is a genuine public support of its principles. Without citizen interest in local government, it is nearly impossible to develop either the local leadership or the legislative interest necessary to install genuine local self-government. The states in which there are active citizen organizations are usually the states in which local self-government flourishes. These organizations are both a cause and a result. They exist because there is a warm civic interest, and their very existence tends to stimulate further citizen participation in government.

It is sometimes said that home-rule is a delusion; that the legislatures and courts have undermined the powers of cities even in home rule states, that home rule cities are no better off than their sisters which are under some form of legislative charter. Such a view overlooks the substantial success which home rule has had in states like California, Colorado, Michigan, Minnesota, New York, Wisconsin, Arizona, and Texas, and focuses attention on the states like Ohio and Utah where it has been of little aid to the cities. The value of a device is not to be judged either by a defeat under adverse conditions, or by its triumph under favorable ones. The real question is its prospect of success in the normal situation. If the average state is studied it will be found that, even under something less than ideal conditions, home rule offers several advantages to the cities which have adopted charters under it.

A home rule city is almost certain to have a considerably wider range of choice in its local government arrangements than one not under home rule. If it desires the city manager plan, the mayor-council plan, or any other plan of local government, it can have it, thus adjusting its governmental structure to its peculiar needs. Regardless of the limitations which legislatures or courts may attempt to place on other aspects of home rule, they have seldom tried to limit the kind of administrative organization which the city may provide or limit the way it enforces responsibility on the part of public officers. The term, method of choice, and means of removal of public officers generally rests with the city which has adopted a home rule charter. Usually the compensation of their own officers is for them to determine. If the citizens desire to retain in their hands specific governmental devices to enforce representativeness of their council or the responsibility of their officers, they are usually permitted to do so. Thus home rule cities may have the referendum for municipal ordinances, the recall of public officers, or proportional representation for

the election of the council, even though these devices are not available to other cities. What is perhaps of even greater significance is the fact that a home rule city can choose which of these devices it wishes to utilize, and if it desires to do so, it can decline to adopt any of them. The form of government which that city will have is a matter for it to determine, and is not prescribed for it by legislature, administrative officer, or court.

The powers of home rule cities are likely to be somewhat less than they might wish, due to limitations which may be placed on them by legislative action or court decision. Nevertheless, in spite of the tendencies of the courts to hamper municipal activities, those cities which operate under home rule charters generally have somewhat greater powers than the other cities may enjoy. In part this is because the legal issues involving the grant of powers to cities are simplified under home rule. The city which has made its own charter need not search the statutes for its powers, and also search its charter to determine if there are restrictions on them. Since both the source of its municipal authority as well as limitations on its government are on its charter, the problems of the legal department are greatly simplified.

Even under the most restrictive of judicial attitudes, the very existence of home rule cannot help but imply that the state, through the constitutional grant, has given the city some power. Without such an assumption, home rule becomes meaningless. Thus the efforts of home rule cities to engage in new enterprises, or to provide new services are regarded with somewhat less suspicion. Where the rule prevails that the city may assume new powers if the state has not already entered the field, the scales are tipped even more in favor of municipalities. Regardless of the fact that the courts may support the states in their appropriation of municipal powers, it should be remembered that there is always a large reservoir of unappropriated powers from which the cities may draw under home rule. Furthermore, the home rule provision is certain to offer some barrier, however slight, to legislative interference in purely municipal matters. To the extent to which the courts enforce this barrier, local autonomy is protected.

In a number of states, the very existence of a home rule provision in the constitution has had a salutary effect on the legislature. Since the cities can frame their own charters, making them liberal if they wish, the law makers tend to liberalize the general incorporation laws for cities. Thus the wide grant of local powers which Wisconsin cities enjoy is really the result of legislative grants which followed the enactment of municipal home rule in the constitution. In Nebraska, the legislature has so liberalized the general legislation governing cities, that only three of them have found it necessary to adopt their own home rule charters. Under these conditions, a home rule clause benefits all the cities in the state, not merely those which engage in municipal charter making, and its value cannot be measured by the number of new charters, or charter amendments which are adopted under it.

From the technical point of view, there is very general agreement that home rule charters tend to be better drafted than are special legislative charters. They are usually shorter, more definite, more flexible, and clearer. They are much more likely to be in keeping with the current needs of the community because they are adopted only because the voters themselves want them. The fact that charter making is concentrated in the city itself, tends to center responsibility for that function on the charter commission and on the voters which elected it. With legislative charters this responsibility is divided between city and state, and since the process of drafting a legislative charter is frequently attended with less publicity than is the work of a home rule charter commission, the spur of popular criticism is lacking. The advantage of a clearer, more flexible, and popularly understood charter is great indeed, from the viewpoint of smooth functioning of local government.

While the evidence is not sufficient to warrant a categorical statement that home rule cities are more efficiently governed than are other cities, there is good reason for thinking that this may be the case. It is not without significance that one half of the cities having the manager form of government adopted it by drafting or amending home rule charters. Likewise, it requires considerable citizen alertness and aggressiveness for a community to undertake the rather arduous task of framing its own instrument of government. The very fact that more than 500 cities of the United States have done so is an indication that, in them at least, there is considerable citizen interest in local government.

Finally, it is not without significance that many of the states which have the reputation for strong and efficient state governments are the very states which have been most generous in their grants of local autonomy to cities. Instead of weakening the states, home rule appears actually to have strengthened them. The very citizen interest which makes self-government workable in the cities can carry over to increase the public interest in the state government, to the substantial benefit of the latter.

CHAPTER V

SUMMARY AND RECOMMENDATIONS

The conclusions drawn in this chapter must be read in the light of two broader generalizations made in this report. First, it is undeniably true that legal solutions are only partial solutions, and that they will accomplish little without concomitant action in the direction of establishing sound administrative practices, providing adequate revenues for localities, and reducing the number of overlapping and unnecessary units of local government. Second, the reordering of legal relations, which results in placing great burdens upon state legislatures, is contingent upon a new understanding of legislative responsibilities for sound administration. The need, on the one hand, is for an attack on the problems of state-local relationships from every side, advances at one point being contingent upon success at another. On the other hand, legislative responsibilities must be met by the frank admission that the problems of state-local relationships are too complex for detailed legislative supervision, that legislatures must deal with the various sides of the problem on the basis of principle, that emphasis must be placed on the erection of a sound administrative organization, and that the flexibility in operation must be assured this organization while suitable controls are enacted for its continuous legislative accountability.

In 1937, the National Resources Committee pointed out that the American city was the nation's "principal instrument of public service and community control," but that it was "still the legal creature of higher authority, subject to their fiat for the most minor of powers and procedures ***." In many ways, the report asserted, "the city is the ward of a guardian which refuses to function."

The cogency of this remark must be admitted. Suggestions set forth in the preceding discussion point the way to more fruitful legal relations between states and localities. There are two distinguished characteristics of this new relationship. First, it calls upon state legislatures to exercise greater responsibility in erecting new programs of state-wide supervision and in delegating new powers to both state administrative agencies and to localities themselves. Second, it allows a new degree of freedom to localities, both cities and counties, where freedom is necessary to meet local problems, and is consistent with the state-wide welfare. This program lays the legal foundation for meeting what Professor Merriam has named as the greatest need of localities: "Authority to act promptly and effectively in the peculiar situations which are consistently arising."

The desirable solution to state-local legal relations must free state legislatures from the burden of local legislation and grant adequate discretionary powers to localities. This end may be achieved through a system of general, optional laws or a system of constitutional home rule. These systems of general laws and home rule may be profitably combined. The special advantage of the scheme of general laws is that it may be almost completely implemented through legislative action. The special charter system and the use of local laws are the least desirable means of giving corporate existence and authority to localities. But, provisions against special legislation are relatively ineffective unless balanced by appropriately broad powers for localities.

The most important legal requirement for counties is to free legislatures from the numerous constitutional provisions that restrict legislative activity with respect to county matters. Present county structures should be replaced with more efficient mechanisms. A necessary step in this direction is to reduce the large number of elected officials, of whom a considerable portion enjoy constitutional status. Whether counties are to function with relatively great, or little, local discretion, county policy-making function should be transferred from the large number of existing officers and boards to a single, elected policy-making body; administrative functions now performed by independent officers and boards should become the responsibility of officials appointed by the central county body or by its own appointed executive.

As indicated in Chapter II, skeleton provisions for home rule in Nevada's cities and counties already exist in the constitution. Section 25 of Article IV provides that "the legislature shall establish a system of county and township government which shall be uniform throughout the state." Section 8 of Article VIII provides for the organization of cities and towns by general laws, and for the electors of any city or town to frame, adopt, and amend a charter for its own government, or to amend any existing charter. But, there are serious restrictive provisions in Section 20 of Article IV, Section 32 of Article IV, and Section 1 of Article VIII. In the absence of new and lengthy, detailed provision for home rule for cities and counties, similar to those set forth in the Model State Constitution, as compiled by the National Municipal League (See Appendix), it appears that a long stride toward home rule in Nevada can be achieved by the elimination of the restrictive provisions in the aforementioned three sections. Nevada's general laws pertaining to the incorporation of cities and towns and the government of counties need to be entirely rewritten and modernized. Due to the inadequacy of the general laws relative to the incorporation of cities and towns, Nevada's principal cities have been incorporated by special charter acts, and must come to the legislature for every minor amendment. Once the restrictive provisions of our Constitution are removed, new and modernized general laws can be drawn with the help of the Nevada Municipal Association,

the Nevada Association of County Commissioners. various interested city and county officials, the Director of the Commission for Revision and Compilation of Nevada Laws, and the various city and district attorneys. While it will be some years before all of the following recommendations are carried into effect, because of the length of time involved in amending Nevada's Constitution, it is sincerely believed that each one would make an important contribution in the achievement of the object of home rule for cities and counties, and that they merit careful study and appropriate action. It is to be noted that in the recommended amendments to sections of the Constitution new matter is indicated by underscoring and matter to be omitted is enclosed in brackets.

(1) That Section 20 of Article IV of the Constitution of the State of Nevada be amended to read as follows:

Section 20. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: regulating the jurisdiction and duties of justices of the peace and of constables, and fixing their compensation; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; vacating roads, town plots, streets, alleys, and public squares; summoning and empanelling grand and petit juries, and providing for their compensation; regulating county and township business; authorizing bond issues; locating or changing any county seat; incorporating any county, city, or town, or to amend the charter thereof; regulating the election of county and township officers; for the levying, assessment, and collection of taxes for state, county, and township purposes; providing for opening and conducting elections of state, county or township officers, and designating the places of voting; providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities; giving effect to invalid deeds, wills, or other instruments; refunding money paid into the state treasury, or into the treasury of any county; releasing the indebtedness, liability, or obligation of any corporation, association, or person to the state, or to any county, town or city of this state; but nothing in this section shall be construed to deny or restrict the power of the legislature / to establish and regulate the compensation and fees of county officers,/ to authorize and empower the boards of county commissioners of the various counties of the state to establish and regulate the compensation and fees of township officers in their respective counties, to establish and regulate the rates of freight, passage, toll, and charges of railroads, toll roads, ditch, flume, and tunnel companies incorporated under the laws of this state or doing business therein.

(2) That Section 32 of Article IV of the Constitution of the State of Nevada be amended to read as follows:

Section 32. /The legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: county clerks, county recorders, auditors, sheriffs, district attorneys, county surveyors, public administrators, and superintendents of schools. The legislature shall provide for their election by the people, and fix by law their duties and compensation.// County clerks shall be ex officio clerks of the courts of record and of the boards of county commissioners in and for their respective counties.

(3) That Section 1 of Article VIII of the Constitution of the State of Nevada be amended to read as follows:

Section 1. /The legislature shall pass no special act in any manner relating to corporate powers except for municipal purposes; but corporations may be formed under general laws, and all such laws may, from time to time, be altered or repealed.7 The legislature shall pass general laws for the formation of corporations; but no corporation shall be created by special act.

(4) That the legislature cease considering and passing local and special laws for counties and cities when the Constitution is amended as recommended above, and that it conform with the intent of the amendments and thereby substantially reduce the number of bills introduced at each legislative session.

(5) That the legislature pass new, modern, permissive rather than mandatory statutes for home rule in cities and counties. Localities may achieve substantial grants of local discretion through general laws of a permissive character. Where prohibitions against special laws are balanced by appropriate, broad general statutes, they will be productive of highly beneficial results. A general grant of authority should be given by state law to municipalities and counties, authorizing them to establish and to supply services for the general welfare of their communities within the limits established by law.

(6) That the permissive statutes make at least four major forms of city government available: mayor-council, commission, council-manager, and combination (city and county).

(7) That the permissive statutes make the county-manager form of government available to counties in addition to the system already authorized by law.

APPENDIX

The following Article VIII on "Local Government" is a part of the "Model State Constitution" as prepared by the National Municipal League.

Article VIII

Local Government

Section 800. Organization of Local Government. Provision shall be made by general law for the incorporation of counties, cities, and other civil divisions; and for the alteration of boundaries, the consolidation of neighboring civil divisions, and the dissolution of any such civil divisions.

Provision shall also be made by general law (which may provide optional plans of organization and government) for the organization and government of counties, cities, and other civil divisions which do not secure locally framed and adopted charters in accordance with the provisions of section 801, but no such law hereafter enacted shall become operative in any county, city, or other civil division until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 801. Home Rule for Local Units. Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing, publishing, and adopting a charter or charter amendments.

Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of 10% of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than sixty days thereafter, or at a special election if authorized by law, the question "Shall a commission be chosen to frame a charter or charter amendments for the county (or city) of _____?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

A petition to have a charter commission may include the names of five, seven or nine commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority.

Section. 802. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers, and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power.

Section 803. County Government. Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties, and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than 25 per cent of the total population of the county, and (3) in the county outside of such city or cities.

Section 804. City Government. Except as provided in section 802 and 803, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.

The following shall be deemed to be a part of the powers conferred upon cities by this section when not inconsistent with general law:

(a) To adopt and enforce within their limits local police, sanitary and other similar regulations.

(b) To levy, assess and collect taxes, and to borrow money and issue bonds, and to levy and collect special assessments for benefits conferred.

(c) To furnish all local public services; and to acquire and maintain, either within or without its corporate limits, cemeteries, hospitals, infirmaries, parks and boulevards, water supplies, and all works which involve the public health and safety.

(d) To maintain art institutes, museums, theatres, operas, or orchestras, and to make any other provision for the cultural needs of the residents.

(e) To establish and alter the location of streets, to make local public improvements, and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements, and also to acquire additional property in order to preserve and protect such improvements, and to lease or sell such additional property, with restrictions to preserve and protect the improvements.

(f) To acquire, construct, hire, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(g) To issue and sell bonds, outside of any general debt limit imposed by law, on the security in whole or in part of any public utility or property owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(h) To organize and administer public schools and libraries.

(i) To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or appurtenant thereto; and gifts of money or property, or loans of money or credit for such purposes, shall be deemed to be for a city purpose.

Section 805. Public Reporting. Counties, cities and other civil divisions shall adopt an annual budget in such form as the legislature shall prescribe, and the legislature shall by general law provide for the examination by qualified auditors of the accounts of all such civil divisions and of public utilities owned or operated by such civil divisions, and provide for reports from such civil divisions as to their transactions and financial conditions.

Section 806. Conduct of Elections. All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.