1967

# Local Government in Missouri: The Crossroads Reached

Peter W. Salsich

# LOCAL GOVERNMENT IN MISSOURI: THE CROSSROADS REACHED

PETER W. SALSICH, JR.*

## I. INTRODUCTION

Would you believe that there are sixty-two pages on the Missouri statute books regulating first and second class cities, yet there are no first and second class cities in Missouri?[1]

Would you believe that policemen in fourth class cities may enforce laws of the state as well as of the city, but policemen in third class cities may not?[2]

Would you believe that many cities may regulate the activities of lightning rod agents, corn doctors, lung testers, and muscle developers within their city limits, but not the activities of awning salesmen or the maintenance of juke boxes?[3]

Would you believe that an 1808 law, enacted before Missouri became a state, still applies to approximately 200 towns and villages because 1953 annexation laws simply refer to "all cities" rather than all cities, towns and villages?[4]

Would you believe that of the 487 special road districts in Missouri some are so small that they maintain only a mile or so of roads?[5]

This paraphrase of a currently popular television program is designed to point out some of the more extreme examples of conflicting and obsolete

---

*General Counsel for the Missouri Office of State and Regional Planning and Community Development, Jefferson City, Missouri; A.B. 1959, University of Notre Dame; J.D. 1965, St. Louis University.

Acknowledgment is given to Mr. Frank J. Iuen, III, a senior at the University of Missouri School of Law, for his valuable research assistance in the preparation of this article.

1. FAUST, THE CONSTITUTION AND THE ADMINISTRATIVE STRUCTURE 42 (Missouri Economy Study No. 4, Research Center, School of B. & P. A., U. of Mo. 1964).

2. §§ 85.561(3), .610-.620, RSMo 1959.

3. §§ 71.610, 94.110, RSMo 1959; Moots v. City of Trenton, 358 Mo. 273, 214 S.W.2d 31 (1948); Keane v. Strodtman, 323 Mo. 161, 18 S.W.2d 896 (En Banc 1929).

4. 1 Mo. Terr. Laws 1808, at 184; §§ 80.030, 71.015, RSMo 1959; Emerson Elec. Mfg. Co. v. Cty of Ferguson, 376 S.W.2d 643, 647 (St. L. Mo. App. 1964).

5. MISSOURI PUBLIC EXPENDITURE SURVEY, BETTER LOCAL GOVERNMENT FOR EVERYONE IN MISSOURI 6 (October, 1966).

provisions presently found in the laws affecting local government in Missouri.

Missouri is changing rapidly. No longer is it a completely agriculturally-oriented society having little or no contact with other parts of the country. Missouri today is a fast-growing, rapidly developing potential industrial giant of the Midwest suffering the traditional pains that accompany any significant growth.

The talent of Missouri's people, the wealth of its natural resources, the strength of its educational institutions, and the advantage of its location in the center of the country on a major waterway speak loudly and convincingly of Missouri's future. It is a future bright with promise but clouded with uncertainty because of the inadequacy of present statutory tools needed to modernize local government and bring together, in a comprehensive and efficient manner, the vast human, educational, economic, natural, and physical resources of the state.

As creatures of the state, municipal corporations and other political subdivisions have no inherent powers of their own, but derive these powers from the constitution of the state and the legislative acts of the General Assembly.[6] The laws that govern Missouri's 114 counties, 892 municipalities, 329 townships, and 742 special districts are scattered throughout 564 chapters and 6,000 pages of the Missouri Revised Statutes.[7] Over a period of more than a century these laws have been added to, amended, deleted, and revised, but no attempt has been made to reorganize or codify them into one thoroughgoing and systematic municipal code.

It is virtually impossible for one dealing with local government in Missouri to become an authority to the extent of even knowing all the various provisions relating to local governments contained in the Missouri statutes, much less to be conversant in their full meaning and import. Nothing short of a definitive study of these statutes can succeed in pin-pointing all the laws governing local government and cataloging all the obsolete and conflicting provisions found there. This article is not such a study. It attempts only to introduce the reader to the problem and set the stage for a badly-needed, full scale review of local government law in Missouri.

---

6. For an excellent discussion of the historical evolution of general state policy concerning local government, see STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL AND PERSONNEL POWERS OF LOCAL GOVERNMENT, a report of the Advisory Commission on Intergovernmental Relations, October, 1962.

7. U.S. BUREAU OF CENSUS, CENSUS OF GOVERNMENT—1962, GOVERNMENT ORGANIZATIONS 29 (1962).

## II. The Problem in Municipalities

### A. *Classification*

Classification of municipalities is a major stumbling block to any intelligent study of local government laws in Missouri. The state constitution provides for four general classifications of cities in addition to constitutional charter cities.[8] The statutes of Missouri further establish the classification by population and allow for the four general classifications plus the two additional classes of towns and villages and of cities operating by special grants of the Missouri legislature prior to 1875.[9]

The 1962 census lists 892 municipalities in Missouri.[10] Of these, 14 have adopted home rule charters, 11 have special charters from the legislature, 61 are third class cities, about 546 are fourth class cities, and the balance, some 260, are classified as towns and villages.[11]

At present, there are five cities that qualify under the constitutional standards to become first class cities, and ten that could become second class cities. However, there are no cities in either class, and there have not been any for some time.[12] Even so, some 62 pages, containing 202 sections, remain on the statute books setting forth in rather precise detail the powers and limitations of first and second class cities.[13]

In addition to the generally known classifications enumerated above, there are at least twelve other statutorily enumerated classifications for municipalities in Missouri.[14] Some of these additional classifications refer to

---

8. Mo. Const. art. VI, § 15.
9. §§ 72.010, .050, 81.010, RSMo 1959.
10. U.S. Bureau of Census, *op. cit. supra* note 8, at 29.
11. Karsh, The Government of Missouri 168-73 (9th ed. 1966).
12. *Id.* at 170, 172.
13. §§ 71.010-.160, RSMo 1959.
14. The classifications and sections of the Missouri Revised Statutes referring to them are as follows:
*Cities of less than 30,000 inhabitants*
Public Parks, § 90.500
Power to build and maintain sidewalks, § 88.863
*Cities of 30,000 or less*
Storm sewers along railroad right of way, § 398.670
*Cities of 100,000 inhabitants or over*
Fire department regulation, § 87.380
Cooperation of cities with drainage districts for flood protection, § 70.330
Municipal and school election procedure in Clay County, § 119.040
*Cities of 300,000 to 700,000 inhabitants*
Cost of appeal to be paid by city when the defendant is acquitted of violating a city ordinance, § 98.027 (applies to Kansas City only)
*Cities of 400,000 inhabitants and over*
Scales of weights and measures, § 413.380(2)
Additional bonding authorization for national parks or plazas, § 95.527
*Cities of over 450,000 inhabitants*

particular types of government, such as the commission form or city manager form. The great bulk, however, are based on population. Some of these population classifications are drawn so narrowly that they amount to special legislation affecting a very few municipalities. Population classifications range from cities of 600,000 inhabitants and over to special charter cities of more than 500 and less than 3,000 inhabitants.

### B. *Obsolescence in Governing Statutes*

To compound the problem, the statutes that govern these municipalities are replete with examples of obsolescence. In many instances obsolete statutes have so severely restricted the operations of municipalities that citizens and officials have been forced to resort to other forms of government to solve particular problems, a situation which has contributed significantly to the proliferation of special purpose districts in Missouri.[15]

For example, annexation of adjoining territory by a town or village is governed by section 80.030, RSMo 1959, which is nothing more than a slight modification of the territorial law of 1808.[16] Under this statute, enacted before Missouri even became a state, a town or village may annex adjoining territory by submitting a petition to the county court. If the county court determines that the proposed annexation is "just and proper," the town or village may go ahead with the annexation.[17] In 1953 the General Assembly attempted to tighten up annexation procedures by passing the Sawyers Act. This statute provided that a city proposing to annex adjoining land must first file an action for declaratory judgment in the circuit court of the county in which the unincorporated area is situated. A

---

Pension system for city employees, § 95.540
*Special charter cities* (chapter 81)
(a) 500 and less than 3,000 inhabitants, § 1.060
(b) 1,000 and less than 3,000 inhabitants, § 81.050
(c) Less than 10,000 inhabitants
  (1) Council may require owner to build and repair sidewalks, §§ 88.804, 81.040.
  (2) Establish and maintain city jail, §§ 81.090, .100, .110.
  (3) Construction of levees, § 81.120.
(d) 20,000 to 250,000 inhabitants
  Changing limits and wards of city, §§ 81.200-.27
*Constitutional charter cities*
(a) 300,000 or over, §§ 82.300-.460
(b) 500,000 or over, §§ 82.470-.810

15. FAUST, *op. cit. supra* note 1; POLICY COMMITTEE, COMMITTEE FOR ECONOMIC DEVELOPMENT, MODERNIZING LOCAL GOVERNMENT 32 (July, 1966); ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BULL. No. A-22, THE PROBLEMS OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT (May, 1964).

16. 1 Mo. Terr. Laws 1808, at 184.

17. § 80.030, RSMo 1959.

favorable determination must be rendered by the circuit court, and then the people of the city wishing to annex must vote approval of the proposal.[18]

Courts have interpreted this statute as inapplicable to towns and villages, however, because the legislature failed to use proper phraseology. The Sawyers Act referred to "all cities" rather than "all cities, towns and villages." As a result of this discrepancy, the courts decided that the 1953 law was inapplicable to towns and villages on the theory that, in the past when the legislature intended to include towns and villages in a particular piece of legislation, they were specifically mentioned along with cities.[19] As a result of decisions such as this and of additional legislation, the present annexation procedures are a conglomeration of statutory and case laws requiring close scrutiny by anyone endeavoring to advise a city concerning its powers of annexation.[20]

Another striking example of obsolescence in the local government statutes may be found in those laws governing a municipality's power to license and tax business activities. Section 71.610, RSMo 1959, provides that: "No municipal corporation in this state shall have the power to impose a license tax upon any business, avocation, pursuit or calling, unless such business, avocation, pursuit or calling is specifically named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute."

As a result of this law various other statutes have been enacted, listing specific occupations or avocations which are taxable. For example, section 94.110, RSMo 1959, authorizes third class cities to levy a license tax on 212 specific occupations or businesses. Although this section empowers a city to levy a license tax on such businesses and occupations as lightning rod agents, corn doctors, lung testers and muscle developers, a city does not have the power to tax automatic coin-operated music machines (juke boxes)[21] or awning salesman.[22]

In the case of *Moots v. City of Trenton*,[23] cited with approval in *Hol-*

---

18. § 71.015, RSMo 1959.
19. Emerson Elec. Mfg. Co. v. City of Ferguson, *supra* note 4, at 647.
20. For cities excluding charter cities and cities in St. Louis County see § 70.015, RSMo 1959. For towns and villages see § 80.030, RSMo 1959. For charter cities see Mo. CONST. art VI, § 20 and McConnell v. City of Kansas City, 282 S.W.2d 518 (Mo. 1955). For annexation by cities within St. Louis County see §§ 71.860-.920, RSMo 1965 Supp.
21. Moots v. City of Trenton, *supra* note 3.
22. Keane v. Strodtman, *supra* note 3.
23. 358 Mo. 273, 278, 214 S.W.2d 31, 33 (1948).

*land Furnace Co. v. City of Chaffee*,[24] the Missouri Supreme Court stated the law as follows:

> In ruling the point in the Siemens case the court pointed out that a city has no inherent power to tax; that such power rests primarily in the state, but may be delegated by constitutional provision or by statutory enactment; that the authority for a city to tax must be expressly granted or necessarily incident to the powers conferred and in case of doubt the power to tax is denied. . . . We rule that the city of Trenton was not empowered by Sec. 6986 to levy a license tax upon music machines because such machines were not specifically named therein.

Numerous legislators have proposed revisions to the licensure laws in order to bring them up to date. The latest attempt came in 1965 when Senator Omer Avery, a Democrat from the 21st Senatorial District, sponsored a measure that would have removed the express grant of licensure powers for specified occupations and substituted general language giving cities, towns, and villages power "to levy and collect a license tax on any occupation, vocation or business conducted or carried on within its corporate limits except those which are specifically exempted by statute as objects of taxation or regulation."[25] This bill passed the Senate but died in the House; a similar measure is expected to be introduced in the 1967 General Assembly.

### C. *Conflicts in Governing Statutes*

With this brief review of two obsolete provisions in the Missouri statutes, our journey into the labyrinth of local law begins. Consider those statutes that are conflicting in nature. Several chapters contain sections giving cities unlimited power to license automobiles, yet chapter 301, regarding registration and licensing of motor vehicles and outboard motors, sets the maximum rates a city may charge.[26]

Chapter 91 of the Missouri Revised Statutes authorizes classes of cities to own and operate certain utilities, including waterworks, gas and power plants, electric light plants and ice plants.[27] The management of such utilities is placed with a Board of Public Works. Sewers are not

---

24. 279 S.W.2d 63 (Spr. Mo. App. 1955).
25. Senate Bill No. 101, 73d General Assembly (1965).
26. § 301.340, RSMo 1959.
27. § 91.010, RSMo 1959.

listed in this chapter, but in chapter 250 authority to place sewer operations under this same board is granted.[28]

In chapter 85 police officers of third class cities are empowered to "make or order an arrest with proper process for any offense against the laws of the city . . . ."[29] However, just a few sections away, in this same chapter, the city marshall (chief of police) of a fourth class city has the power to enforce both the laws of the city and the state.[30] This broad enforcement power of state laws is also applicable to police officers of fourth class cities.[31]

Chapter 85 also permits fourth class city police officers to arrest without a warrant for offenses against both city and state laws committed in his presence.[32] Again, the third class city police officer can do this for offenses against the city but not the state.[33]

It is interesting to note that the provision relating to third class city police officers was enacted in 1955[34] while the fourth class city police officers' powers to arrest for state law violations have been on the books since 1939.[35] Neither the cases nor the commentators give any clue to the legislature's reasonings in giving police officers in fourth class cities greater powers than their colleagues in the larger third class cities.

In this writer's opinion, the pitfalls confronting city attorneys and other officials concerned with local government law are nowhere more graphically illustrated than in chapter 327 of the Missouri Revised Statutes. This chapter is on the books for the express purpose of setting requirements and standards for architects and professional engineers; yet buried deep within a column-length sentence of section 327.090(4), titled "Exemptions," is a 15-line clause which limits the size of buildings that may be designed and constructed within a city without the aid of licensed architects.[36]

---

28. § 250.025, RSMo 1959.
29. § 85.561(3), RSMo 1959.
30. § 85.610, RSMo 1959.
31. § 85.620, RSMo 1959.
32. § 85.610, RSMo 1959.
33. § 85.561(3), RSMo 1959.
34. Mo. Laws 1955, at 290, § 3.
35. §§ 7125, 7126, RSMo 1939.
36. Paragraph 4 of § 327.090, RSMo 1959 reads as follows:

(4) Nothing contained in this chapter shall prevent persons, mechanics or builders from making plans, specifications for, or supervising the erection, enlargement or alteration of buildings or any parts thereof to be constructed by themselves or their own employees for their own use, nor shall any provision of this chapter prevent persons, mechanics or builders in the regular and continuous employ of any person, firm or corporation, from making plans, specifications for, or supervising the erection, en-

## III. The Problem in Special Districts

Confusion becomes piled upon conflict when the laws relating to special benefit districts are considered. Special benefit districts, such as road districts, water and sewer districts, and fire protection districts, are the most rapidly growing form of local government in Missouri. The Federal Census Bureau lists over 3,700 units of local government in Missouri.[37] Special districts and school districts comprise about sixty-two per cent of this total. Various agencies have ranked Missouri anywhere from fourth to tenth among the states in the number of units of local government.[38]

Special districts have developed, in large measure, because of the debt and tax limitation provisions which exist in the state constitution.[39] Local governments historically have searched for new avenues to circumvent unduly restrictive statutory and constitutional debt limitations. Special districts are permitted to incur revenue bond debt, secured by user charges and special assessments which are excluded from debt limitations of cities and counties. This often results in the special district assuming functions which the local government cannot financially assume and the taxpayers being forced to pay "benefit" assessments or user charges

---

largement or alteration of buildings, or any parts thereof, to be owned by or leased to such person, firm, or corporation, unless the same shall endanger the public peace, health and safety; and provided further, that the working drawings for such construction are signed by the author thereof in his true name followed by such title as he may be lawfully authorized to use; nor shall this chapter be construed in any way affecting superintendents, inspectors, foremen or building trades craftsmen while performing their customary duties; and nothing contained in this chapter shall be held or construed to have any application to the constructing, remodeling or repairing of any building or other structure outside of the corporate limits of any city or village, where such building or structure is to be, or is used for residential or farm purposes, or for the purpose of outbuildings, or auxiliary buildings in connection with such residential or farm premises; *nor shall this chapter apply to the constructing, remodeling or repairing of any privately owned residential, commercial or industrial building or structure inside or outside of the corporate limits of any city or village unless such building or structure, or the remodeling or repairing thereof provides for the employment, housing or assembly of ten or more persons or covers over twelve hundred square feet of ground area with height to uppermost ceiling over thirty feet or two habitable stories above basement, and with cubical volume over twenty thousand cubic feet.* (Emphasis added.)

37. U.S. Bureau of the Census, 6 State Bulletins No. 23, Government in Missouri (1959).

38. *Ibid.*

39. Advisory Commission on Intergovernmental Relations, *op. cit. supra* note 15, at 53-63.

for various functions to a number of overlapping quasi-governmental jurisdictions.[40]

The inherent overlapping of functions among special districts is apparent in the statutes authorizing these districts. For example, drainage districts may be formed for the purpose of reclaiming swamp, wet or overflow land, and other property.[41] In addition, owners of a majority of acreage located in a body of swamp, wet or overflowed land may form a levee district in order to reclaim such land.[42] Finally, water conservancy districts may be formed to determine the needs for water, to improve water resources and alleviate floods, to conserve water against drought, and to develop water resources for sanitary, domestic, and other purposes.[43] All three types of districts have responsibilities which relate to water supply, yet each type of district is given jurisdiction and powers of taxation. Theoretically, all three could exist in the same area.[44]

The Missouri statutes list some 22 different types of districts which may be formed. These include road districts,[45] street light maintenance districts,[46] drainage districts,[47] levee districts,[48] water supply districts,[49] sanitary drainage districts,[50] sewer districts,[51] water conservancy districts,[52] soil and water conservation districts,[53] fire protection districts,[54] library districts,[55] nursing home districts,[56] health center districts,[57] hospital districts,[58] and housing and land clearance authorities.[59] This "laundry

40. *Ibid.*
41. § 242.020, RSMo 1959.
42. § 245.015, RSMo 1959.
43. § 257.200, RSMo 1959.
44. Dr. Richard Dohm of the University of Missouri, writing in the *Missouri Municipal Review* in its September, 1966, edition, noted that 300 new water supply districts have been created in Missouri since 1962, when census figures reported that Missouri ranked fourth nationally in the number of rural special benefit districts and had the eighth-highest total number of special districts among the 50 states. The article went on to state that even though the total number of special districts declined in Missouri from 1952 o 1962, the creation of water supply districts since 1962 has very likely reversed the trend.
45. § 233.015, RSMo 1959.
46. Ch. 235, RSMo 1959.
47. Chs. 242-244, RSMo 1959.
48. Ch. 245 RSMo 1959.
49. Ch. 247, RSMo 1959.
50. Ch. 248, RSMo 1959.
51. Chs. 249-250, RSMo 1959.
52. Ch. 257, RSMo 1959.
53. Ch. 278, RSMo 1959.
54. Ch. 321, RSMo 1959.
55. Ch. 182, RSMo 1959.
56. § 198.200, RSMo 1965 Supp.
57. Ch. 205, RSMo 1959.
58. Ch. 206, RSMo 1965 Supp.
59. Chapter 99, RSMo 1959 & 1965 Supp.

list" of special districts does not include those statutes relating to school districts under which there are six different possible types of districts, ranging from rural elementary school districts to junior college districts.[60] Not all of these districts have power to tax, but all perform some sort of governmental function.

The Advisory Commission on Inter-governmental Relations, a national agency created by Congress in 1959,[61] has long called for state action to regulate and control the operation of special districts. These recommendations are designed not to abolish special districts, but to provide some mechanism for evaluating them and for providing alternate forms of government if it turns out that a district is not serving its function in the most efficient manner. Basically, the Advisory Commission's recommendations call for a state-level review of existing special districts and of any petitions to create new districts, with standards established which these districts must meet if they are to be created or are to continue in operation.[62]

---

60. The school districts and the sections of the Missouri Revised Statutes referring to them are as follows:
Six-director school district (first class counties), § 162.101, RSMo 1965 Supp.;
Six-director school district (second, third, and fourth class counties), § 162.111, RSMo 1965 Supp.;
Urban school district (cities of 75,000 to 700,000 population), § 162.461, RSMo 1965 Supp.;
Metropolitan school district (cities not within a county), § 162.571, RSMo 1965 Supp.;
Common school district (unorganized territory), § 162.671, RSMo 1965 Supp.;
Junior college district, § 178.770, RSMo 1965 Supp.

61. 5 U.S.C. §§ 2371-2378 (1964).

62. Each of the recommendations urged by the commission is based on the belief that special districts can play an important role in the governmental process. In light of this philosophy, the commission urged the following:

(1) States should enact legislation to provide that all special districts be required to secure approval of the creation by a designated agency consisting of representatives of the county or counties and city or cities within the county or counties, within which the proposed district will operate.

(2) State legislation should provide further that the designated approval agency shall secure proof that existing units of government are unable to provide the service needed, and the approval agency finds a definite need for the proposed service. It is the feeling of the commission that only after existing units of government are declared unable to provide essential services that special districts should be permitted.

(3) The commission recommends that states enact legislation to insure that the activities of special districts are coordinated with the activities of units of general government. Such legislation would provide that any proposal for special district capital improvements would be sub-

The Missouri Public Expenditure Survey, in an October, 1965, publication entitled *Better Local Government for Everyone in Missouri,* has suggested a method for removing one of the basic causes for fragmenting road administration in special districts. The Survey reports that in recent years a movement has developed to give cities a more equitable share of property taxes collected for road purposes within their borders. Laws have been enacted requiring some of the larger counties in the state to share road and bridge revenues collected on streets within municipalities.[63] This report states that the Permanent Commission on Local Government, created by the legislature in 1961, has recommended that this requirement be extended to all counties, including those having township organization.[64] The Survey recommends this, along with an additional step of permitting the revenues to be refunded to the city and allowing the city to do the work itself, if it so desires.[65] The Survey feels that this would eliminate the necessity of having the county and road district perform work within the city and would be a step toward eliminating the need for special road districts.[66]

In this same report, the Survey suggested a study by the legislature to determine ways of reducing the fragmentation of public services resulting from excessive use of the special district device. The establishment of minimum standards of size and financial ability which would have to be met before a new special district could be formed or existing districts could continue was recommended.[67]

---

mitted, for comment, to the unit of government within which the proposed improvements would occur at least 60 days prior to final action on the proposal by the governing body of the district. Furthermore, if the functions of the special district affect a program conducted by the state, the approval of district activities by the state agency should be required.

(4) States should also pass enabling legislation requiring that a designated state agency and an appropriate county governing body should be informed of all special districts. Furthermore the state agency should maintain uniform accounting systems of all special districts within the state.

(5) Procedures should also be provided so that a unit of local government, or a larger district can assume the functions performed by special districts. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *op. cit. supra* note 15, at 75-80.

63. MISSOURI PUBLIC EXPENDITURE SURVEY, BETTER LOCAL GOVERNMENT FOR EVERYONE IN MISSOURI 7 (Oct. 1966).

64. *Ibid.*

65. *Ibid.*

66. *Id.* at 6.

67. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BULL. No. A-22, THE PROBLEMS OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT 75-80 (May, 1964).

## IV. The Problem in County Government

The third basic type of local government, the county, suffers from problems of similar magnitude. Originally organized as administrative arms of the state, counties have dwindled in power until today, except for charter counties, they are responsible for very little other than assessment and tax collection, operation of a county jail, and law enforcement in unincorporated areas. Missouri's 114 counties rank the state fourth in the nation in the number of counties.[68] Counties range in population from St. Louis County, with close to 900,000, to Carter and Worth Counties, with populations of less than 4,000. The Public Expenditure Survey notes that Missouri's 114 counties, with the exception of St. Louis County, are marked "by the fundamental weakness that neither their executive nor legislative function is clearly defined. The nominal governing body of the county, the 3-member county court, is a hybrid, partaking in limited ways of both the executive and legislative branches of government."[69] The Survey goes on to point out that more than a dozen county officials, most of them elective, perform various county functions with little or no supervision or coordination. "In some cases elected county officials operate their individual offices almost as if they were independent units of government."[70]

The Missouri constitution permits counties with a population exceeding 85,000 to adopt a charter form of government and, within limits, to provide for their own governmental structure.[71] The size of the population requirement is such that only five counties are presently eligible to frame their own charters. In 1950, St. Louis County became the first county to adopt this form of government.[72] In the charter the county revised its internal structure by creating a County Supervisor to serve as its chief executive officer and a seven-man council to perform the legislative function.[73]

A joint resolution has been introduced in the 1967 General Assembly to liberalize this provision and make counties with a population of 50,000 eligible for charter form of government.[74] If this amendment is approved

68. U.S. Bureau of the Census, Census of Government—1962, Government Organizations 29 (1962).
69. Missouri Public Expenditure Survey, *op. cit. supra* note 63, at 13.
70. *Ibid.*
71. Mo. Const. art. VI, § 18(a).
72. Karsh, The Government of Missouri 159 (9th ed. 1966); Missouri Public Expenditure Survey, *op. cit. supra* note 63, at 9.
73. *Ibid.*
74. Senate Joint Resolution No. 5, 74th General Assembly, introduced by Senators Webster, Vanlandingham, Blackwell, and Stone.

by the General Assembly and the voting population of the state, the counties of Jasper, Jefferson, Boone, and St. Charles would be able to revise their form of government by means of a county-drawn charter.

## V. The Problem of Home Rule

Any discussion of the organization of governmental units, especially those of cities and counties in Missouri, raises the issue of home rule. Constitutional home rule for cities was an innovation begun here in Missouri with the approval of the 1875 constitution.[75] It was an extremely limited one, however, in that it permitted only cities of population in excess of 100,000 to have home rule. This effectively prevented any city except St. Louis and later Kansas City from adopting home rule charters. It was not until the new constitution was adopted in 1945 that this provision was amended to permit any city having more than 10,000 inhabitants to frame and adopt a charter for its own government.[76] In addition to this population restriction, there is an important little clause that has been tacked onto the home rule provision from its inception and has caused considerable confusion and difficulty in interpreting home rule in Missouri and in determining what cities can do under this concept. The cause of this confusion is the requirement that any home rule charter be "consistent with and subject to the constitution and laws of the state." The constitution made no attempt to define home rule powers nor to indicate with what laws of the state a charter must be consistent. This, in the minds of a number of commentators, had the effect of giving home rule with one hand and taking it away with the other.[77] As a result of this lack of constitutional guidance the courts have over the years pieced together, through a number of cases, a rather complex definition of home rule for Missouri.[78] From an early case in which the supreme court held that general laws relating only to government of cities were subordinate to the provisions of a constitutional charter,[79] the court moved in a number of decisions to a 1959 case involving the City of Joplin and the Missouri Industrial Commission. In that case the court propounded the "paramount interest" rule which holds that "the real test [of home rule] . . . is not whether the state or the municipality has an interest in the

75. Mo. Const. art. IX, § 16 (1875).
76. Mo. Const. art. VI, § 19.
77. Faust, The Constitution and the Administrative Structure 52 (Missouri Economy Study, Research Center, School of B.&P.A., U. of Mo. 1964).
78. Missouri Municipal League, Constitutional Home Rule in Missouri, August, 1966.
79. State *ex rel.* Kansas City v. Field, 99 Mo. 352, 12 S.W. 802 (1889).

matter, since usually both have, but instead whether the state's interest or that of the municipality is paramount."[80]

The constitution and the statutes of Missouri are not clear as to what the powers of the city are in comparison to those of the state. For example, it is unclear what the result would be if a charter city changed its charter in order to perform some municipal function and later the state legislature passed a prohibitory law. The Missouri Supreme Court has held that a city cannot include in its charter any power which is not municipal in its concern.[81] The emphasis in Missouri is on municipal functions, and a city is not entitled to the residue of state concerns. This is a more limited view than some states follow regarding the power of constitutional charter cities. Under this viewpoint, problems arise when a city wishes to act in an area in which there is no prior state legislation. There are basically two views: (1) that a home rule city can act on any problem until the state has acted in this area; or (2) the city cannot, by its charter, act on the problem even though the state has not so acted.

George Nickolaus, former City Counselor and newly elected mayor of Columbia, Missouri, summarizes the court's interpretation of home rule questions in Missouri in a report for the Missouri Municipal League as follows:

> A city having adopted a constitutional home rule charter has freedom from the General Assembly to adopt: (1) A form of government consistent with and in conformity with the constitution; (2) Governmental powers, provided (a) they are consistent with and subject to the constitution, (b) paramountly concern local matters, (c) there are no conflicting state statutes, and (d) the charter specifically authorizes their enactment.[82]

---

80. City of Joplin v. Industrial Commission of Missouri, 329 S.W.2d 687, 693 (Mo. En Banc 1959).

81. State *ex rel.* Garner v. Missouri & Kan. Tel. Co., 189 Mo. 83, 99-100, 88 S.W. 41, 43 (Mo. En Banc 1905):

> But it is not every power that may be essayed to be conferred on the city by such a charter that is of the same force and effect as if it were conferred by an act of the General Assembly, because the Constitution does not confer on the city the right, in framing its charter, to assume all the powesr that the State may exercise within the city limits, but only powers incident to its municipality, yet the Legislature may, if it should see fit, confer on the city powers not necessary or incident to the city government. There are governmental powers the just exercise of which is essential to the happiness and well being of the people of a particular city, yet which are not of a character essentially appertaining to the city government. Such powers the State may reserve to be exercised by itself, or it may delegate them to the city, but until so delegated they are reserved.

82. Missouri Municipal League, Constitutional Home Rule in Missouri, p. 6 (August 1966).

This attempt to clarify the status of home rule in Missouri does not solve the problem of reconciling the many interpretations possible for such words as "consistent," "paramount," and "subject to." The courts have continuously modified the home rule doctrine over the last 90 years, and there is no reason to believe they will not continue to do so in the future. Case law definitions, subject to change with each new set of facts, will not remove the confusion that has developed over the past century. At the very least, the following would appear to be needed: (1) a constitutional definition of home rule; (2) a constitutional and statutory delineation of those powers granted to local governments and those reserved for the state government; and (3) a clear determination of the scope of home rule with a resolution of the question of what takes precedence when conflicting provisions arise in constitutional charters and general laws. Such an undertaking would not be easy. But it would provide the necessary basis for future court decisions and pave the way for eventual clarification of the meaning of home rule.

The Advisory Commission on Inter-Governmental Relations has recommended that the residual powers approach to granting functional home rule be considered by states.[83] This approach authorizes units of government to exercise all functional powers not expressly reserved, pre-empted, or restricted by general laws or the constitution of the state.[84] The model state constitution adopted by the Commission states in part: "Municipalities and counties shall have all residual functional powers of government not denied by this constitution or by general law."[85]

Constitutional language proposed by the National Municipal League contains the following statement: "a county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class and is within such limitations as the Legislature may establish by general law."[86]

New York adopted a comprehensive municipal code in 1964 which included a complete revision of the constitutional provisions concerning local

---

83. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BULL. No. A-12, STATE CONSTITUTION AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL, AND PERSONNEL POWERS OF LOCAL GOVERNMENT (October, 1962).

84. *Ibid.*

85. See the section entitled "Local Government Residual Powers" in ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BULL. No. M-27, 1966 STATE LEGISLATIVE PROGRAM 386 (October 1965).

86. NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION § 8.02, at 91 (6th ed. 1963).

government.[87] New York streamlined its constitutional provisions for local government to three sections requiring six printed pages (Missouri's local government article, article 6, has thirty-two sections and requires twenty pages to print). Section 1 of the New York amendment establishes a bill of rights for local governments which spells out those powers that local governments have. These include the power to elect a legislative body, to elect and appoint local officers, to provide cooperative or joint facilities, services, and activities with any other form of government within or without the state, to annex territory upon consent by majority vote, to take by eminent domain, to operate public utilities, to make a fair return on the value of the property used in the operation of these utilities, to tax at the local level, and to establish all charter forms of government at county levels.[88]

Section 2 of the New York amendment prescribes the powers and duties of the legislature and sets forth the home rule powers of local governments with the following statement: "Every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this Constitution or any general law relating to its proper affairs of government." This section then spells out several areas where local governments have home rule: establishment of qualifications of employees, memberships of the legislative body, transaction of its business, incurring of its obligations, presentation of claims against it, acquisition of property, acquisition of transit facilities, levy of local taxes, wages or salaries of employees, and government, safety, and health of persons within a local governmental area.[89] (The reader will note that the New York provision poses problems similar to those presently existing in Missouri because of its use of the phrase "not inconsistent with the provisions of this constitution . . . .")[90]

Alaska, in perhaps the most liberal extension of home rule power, gives a home rule borough or city all legislative powers not prohibited by law or charter.[91]

Critics of home rule normally cite three main objections:

1. *Reapportionment.* Home rule grew out of an effort to free cities from rural legislatures. Therefore, the argument runs,

87. N.Y. CONST. art. IX.
88. N.Y. CONST. art. IX, § 1.
89. N.Y. CONST. art. IX, § 2.
90. *Id.* at § 2(c)(ii).
91. ALASKA CONST. art. X, §§ 9-11.

why worry about home rule as legislators now come from the cities?

2. *State and Municipal Dichotomy.* This argument points out the difficulty in defining clearly those powers that are of state concern and those that are of local concern. In effect it throws up its hands at the seemingly impossible task of drawing effective boundaries between state and local functions.

3. *The Metropolitan Argument.* Critics in this vein argue that the need for regional and metropolitan approaches requires less home rule and a more cooperative venture. These people feel that home rule core cities and home rule satellite cities act as barriers to metropolitan consolidations, federations, or authorities. This line of argument views home rule as developing entrenched interests which may defeat metropolitan super governments.[92]

In an address by Professor Arthur W. Bromage, Professor in Political Science at the University of Michigan, these criticisms of "home rule" are answered. Professor Bromage charges that the reapportionment argument presents a fallacy in that there is no evidence that urban legislators will follow the urban voting line once elected. He fears that urban legislators may yield to the pressures of "urban interest groups" and neglect the "powers of the municipal corporations."[93]

In answering the "state-municipal dichotomy argument," he notes "the federal system still persists, although everyone concedes that federal-state-local relations are more complex than they were a generation ago."[94]

To refute the "metropolitan argument," Professor Bromage states: "It can be equally urged . . . that home rule ought to be extended over greater regional areas, just as the long-run trend has been to home rule counties as well as cities."[95] As evidence of his contention, he cites the Dade County (Miami, Fla.), metropolitan government which applies home rule principles with a locally designed charter.

## VI. The Problem of Taxing and Borrowing Restrictions

One of the most controversial, yet most complex, issues relating to local government law is the present constitutional limitations imposed on

---

92. Address by Professor Arthur W. Bromage, Missouri Municipal League's 31st Annual Conference, Kansas City, Missouri, Oct. 7, 1965, and reprinted in 30 Mo. Munic. Rev. 222, 241-242 (1965).

93. *Id.* at 241.

94. *Id.* at 242.

95. *Ibid.*

a political subdivision's power to levy taxes and incur debts. These provisions are either championed enthusiastically by individuals and organizations who are fearful of a municipality's ability to manage its own finances in a prudent and efficient manner, or are damned bitterly by harried municipal officials who claim that such restrictions tie their hands so tightly that they are unable to develop workable solutions to the complex problems generated by rapidly advancing technology and changing population.

Present restrictions on local government debt and taxation are found in articles VI and X of the state constitution. The most publicized restriction is the two-thirds voting requirement for passage of general obligation bond issues.[96] Attempts have been made in the past to lower this requirement either to sixty per cent or a simple majority, and a new drive is being made to have a liberalization of this restriction submitted to the voters by the 1967 General Assembly.

The other edge of the debt limitation sword is the constitutional provision which specifically limits the amount of money a city may borrow.[97] It does this in a percentage form, stating that a municipality may become indebted in an amount not to exceed five per cent of the value of the taxable tangible property therein, as shown by the last completed assessment, for state or county purposes.[98] This section of the constitution immediately makes an exception for school districts, allowing them ten per cent. A second exception permits cities and counties, by a two-thirds vote, to incur an additional indebtedness for city or county purposes not to exceed five per cent of the taxable tangible property.[99] Cities under section 26(a) of article VI are further allowed, again by a vote of two-thirds of the qualified electors, to become indebted for an additional ten per cent of the value of taxable tangible property in order to acquire rights of way and to construct, extend, and improve streets and sewer systems.[100] An additional ten per cent is granted cities for the operation of waterworks, electrical, or other light plants.[101] These are actually revenue bonds in that the bonds are retired by income received from the operation of the systems. This last ten per cent is limited by a proviso that the total grand obligation indebtedness of the municipality

96. Mo. CONST. art. VI, § 26(b)(e).
97. Mo. CONST. art. VI, § 26(a)-(e).
98. Mo. CONST. art. VI, § 26(b).
99. Mo. CONST. art. VI, § 26(c).
100. Mo. CONST. art. VI, § 26(d).
101. Mo. CONST. art. VI, § 26(e).

may not exceed twenty per cent of the assessed valuation of taxable tangible property.[102]

These constitutional limitations date back to the Constitution of 1875.[103] They were designed, as similar provisions were in other constitutions, to protect the public from corruption and incompetence in local government. Though these restrictions in many instances served to strengthen the integrity of local government, they also served to weaken the structure of local government because they prevented cities from taking many of the necessary measures to combat problems that refused to go away—problems such as inadequate roads, sewers, housing, employment, and schools. By restricting the spending power of local government these provisions contributed in large measure to the growth of special districts.

The Missouri Municipal League has proposed that a constitutional amendment be enacted which would authorize the issuance of revenue bonds (not to include industrial revenue bonds) by a favorable vote of the governing body of the local government concerned, without a general vote of the people.[104] Some officials go even further and suggest that the constitutional limitation on the amount of indebtedness a municipality can incur be raised and, sometime in the future, be removed entirely.[105] Supporters of this position stress the belief that cities must be given sufficient flexibility to enable them to develop adequate solutions for the problems they face. They also believe that municipal bond purchasers will police the market themselves and, through their refusal to purchase unstable or unsound bonds, will prevent municipalities from incurring unwise financial obligations.

Opponents of this theory are equally vocal. They object to proposals to liberalize tax and debt limitations or the voting requirement for passage of bond issues for two basic reasons: (1) financial obligations are long term and cannot be changed if a mistake is made; and (2) the feeling that the standard method of financing a general obligation bond issue, the property tax, is an unfair tax because it penalizes the small property

---

102. *Ibid.*

103. Mo. CONST. art. X, § 12, 12(a) (1875).

104. 31 Mo. MUNIC. REV. 285, 286 (1966); House Joint Resolution No. 27, 74th General Assembly, introduced by Representatives Growney, Grellner, Ryan, Reed, and Phelps.

105. At present 16 states have removed debt limitations from their constitutions. They are Alaska, California, Connecticut, Delaware, Idaho, Kansas, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Rhode Island, Tennessee, and Vermont. Although these states have removed the limitations from their constitutions, they have included limitations within their statutes. Statutory limitations, however, allow the states greater flexibility.

owner who may be unable or who may not wish to make use of the service that is being proposed for bond issue financing.

The historical reasons for establishing limitations of this sort—fear of local government corruption and jealousy of cities by rural legislatures—no longer appear to be controlling factors. The competency and integrity of most local public officials is a demonstrated fact today. Voters are more educated and, as a consequence, are demanding top quality people to serve in positions of authority in government at all levels. The recent court decisions concerning reapportionment[106] and subsequent action by state legislatures has removed, in general, the dichotomy of representation between rural and urban areas. Future legislatures will reflect the predominance of urban population within the state. It seems reasonable to expect that urban legislators will react favorably to the requests of the cities. While they may not be willing to loosen all the strings which presently bind cities to the will of the legislature, they may be amenable to proposals for loosening these strings sufficiently so that the cities need not be hindered arbitrarily from developing new approaches to their problems and from exploring new ways of financing necessary services.

## VII. The Basic Problem and What Is Being Done

The problems that have been discussed in this article point to a basic concern of local government officials, especially those residing in fast growing metropolitan areas. This concern has to do with the problem of jurisdictional overlap that exists among political subdivisions within a given area, such as counties, cities, and special districts. One of the crucial questions facing local government today is how to achieve true coordination among a county court, a city hall, a board of education, a housing authority, a road district, a library board, a sewer district, and the state and federal governments, while at the same time preserving a truly local and representative system of government. This problem pervades all municipalities, whether large or small. It is clear that the efficiency of the present system of local government is steadily declining. The problems confronting local government are becoming too complex to be handled under the present structure, and it is imperative that new solutions be found.[107]

---

106. Baker v. Carr, 369 U.S. 186 (1962); Jonas v. Hearnes, 236 F. Supp. 699 (W.D. Mo. 1964); Preisler v. Hearnes, 362 S.W.2d 552 (Mo. En Banc 1962).

107. A good example of the need for developing a viable vehicle for fostering intergovernmental relations may be seen in St. Louis, where considerable time and effort is going into attempts to solve the problem of air pollution.

Numerous people, in numerous ways, are setting their sights on solutions to the problems under discussion. Attention is being focused on local government, and interest in this field of government has generated a variety of reports.[108] Of particular interest are three recent developments in Missouri, each of which may have important bearing on local government.

The Missouri General Assembly, in the 1966 special session, enacted a law which established a state planning office and which authorized local communities to join together in establishing regional planning commissions.[109] The concept of regional planning is not new in itself. What is new is the comprehensive approach that is being taken to regional problems in Missouri through the use of the regional planning mechanism. The purpose of regional planning is to draw together available resources, both public and private, from a relatively large area and to direct them in a coordinated manner toward solutions of problems, both immediate and future, which are regional in character.

---

The Attorney General of Missouri recently issued an opinion stating that any ordinance adopted by St. Louis County would have no effect in the ninety-eight municipalities in the county unless each municipality agreed to adopt a similar ordinance.

By the same token, the East-West Gateway Coordinating Council, a regional planning body organized by governmental units in the St. Louis area, has had similar problems in developing air pollution control standards that can be enforced. The model on pollution control adopted by the Gateway Council was strongly criticized by Mayor Alfonso J. Cervantes of St. Louis City. Subsequently, the City of St. Louis adopted standards much stricter than those being considered by neighboring communities in Illinois.

Legislation was introduced in the current session of the General Assembly to allow state action to set up standards which would be enforced by the state in the St. Louis area. This would not solve the problem entirely though, because a large portion of the problem is caused by industries in Illinois. The Air Conservation Commission of Missouri, established by the General Assembly in 1965, would be an effective organ of state government to enforce such standards, but its jurisdiction is only within the State of Missouri.

Another alternative is the creation of Bi-State Compact for Air Pollution Control. This would require the passage of identical statutes by the Missouri and Illinois general assemblies and approval of such a compact by the United States Congress. Governor Otto Kerner of Illinois and Governor Warren E. Hearnes of Missouri have already expressed their interest in such a proposal. One serious drawback to a bi-state compact is that the time required for state legislative and congressional approval is frequently lengthy.

If state or local action is not forthcoming, the federal government could step in and solve the problem its own way. The United States Public Health Service could require a cleanup under the Clean Air Act of 1963, and the St. Louis area problem represents an ideal place to test the effectiveness of the act.

108. POLICY COMMITTEE, COMMITTEE FOR ECONOMIC DEVELOPMENT, MODERNIZING LOCAL GOVERNMENT 32 (July, 1966); FAUST, *op. cit. supra* note 77; MISSOURI PUBLIC EXPENDITURE SURVEY, *op. cit. supra* note 69.

109. Senate Committee Substitute Senate Bill No. 14, 73d General Assembly, 2d Extra Session (1965), §§ 251.010-.320, VERNON'S ANN. MO. STAT.

Under the present law the regional commissions have only the authority to conduct regional planning.[110] The commissions do not possess the legal authority to force anyone to accept any recommendations that may come from the plans.[111] They are not empowered by the act to tax or obligate funds of local governmental units for any purpose whatsoever, nor do the commissions possess zoning authority.[112] The commissions are strictly voluntary organizations composed of representatives of local governmental units whose purpose is to cooperate in the establishment of an orderly plan for the development of a particular region in the state.

It is possible that regional planning commissions could be used by local governmental units as councils of governments, whereby cities and counties within a region could agree on a needed solution and steps to solve a particular problem. It is conceivable that legislation could be enacted to authorize regional planning commissions to construct and operate facilities such as regional nursing homes, jail systems, housing authorities, etc., all of which would enable cities and counties to pool their resources and thus provide more modern facilities and a higher degree of professional care while realizing a greater return on money invested in these facilities. The development of strong, viable regional planning commissions, whose members are elected mayors and county court judges of the cities and counties within the region, might make it possible to study the present structure of local government in Missouri in an orderly and comprehensive manner.

The Office of State and Regional Planning, which administers this program, is expected to become an integral part of the proposed new Department of Community Affairs, if the General Assembly acts upon legislation currently before it to create such a department. This department would become responsible for giving advice and assistance upon request to local governments, for coordinating federal programs of interest to local governments, and for acting as liaison between local and state governments.

The second item of interest is the initiation of a state plan which will study all the resources of the state and bring together under one umbrella a number of recommendations for the future development of the state. In December of 1965 a prospectus of a plan for the state

---

110. Senate Committee Substitute Senate Bill No. 14, § 14, 73d General Assembly, 2d Extra Session (1965), § 251.180, VERNON'S ANN. MO. STAT.

111. *Ibid.*

112. Senate Committee Substitute Senate Bill No. 14, § 7.3, 73d General Assembly, 2d Extra Session (1965), § 251.070(2), VERNON'S ANN. MO. STAT.

of Missouri was prepared.[113] The preparation of this report was financially aided through a federal grant from the Urban Renewal Administration of the Housing and Home Finance Agency, under the Urban Assistance Program, as authorized by section 701 of the Housing Act of 1954.[114] Under this prospectus the state of Missouri was encouraged to do a study on urban areas, including population and land use problems.

As a result of this prospectus, the Office of State and Regional Planning and Community Development has received a $199,000 grant from the Department of Housing and Urban Development to develop a comprehensive state plan. The work program calls for a study of a number of facets of the state, including a concentrated look at urban problems and their effect on state development.

Upon the completion of the work program, the information that has been gathered will be consolidated and comparisons made between cities in different size categories and in different locations of the state, as well as with other areas in the United States. In developing a policy plan for urban areas, consideration will be given to the state's goals and objectives and to companion population, economic, land use and transportation studies.

The Missouri State plan is scheduled to be completed in four years. In the third year of the proposed program, work will begin on the implementation phase of the plan. This phase will consider the means of financing needed facilities, priorities, new programs and policies, legislation, and the suggested timing for various implementation activities. A study will be made of the financial position and the fiscal capabilities of the state. A determination will be made of the effectiveness of the present capital budgeting practices, and the practices of other states will be investigated. Recommendations will be not only in the area of finance, but also in the area of social, legal, and economic needs.

The third and perhaps most significant development is a growing awareness on the part of state and local officials of the need for a detailed review of all the constitutional and statutory provisions relating to local government in Missouri. This should be done in order to codify the provisions into one meaningful document and to modernize them in such a way as to equip Missouri's communities with all the necessary tools for coping with the rapidly approaching twenty-first century.

---

113. Harland Bartholomew & Associates, Consultant's Report for Project No. P-3, A Prospectus of a Plan for the State of Missouri, December, 1965.

114. Federal Housing Act of 1954, 68 Stat. 640, 40 U.S.C. § 461.

Missouri has received a federal grant to undertake this program and Governor Warren E. Hearnes has requested matching funds from the General Assembly to help the program get under way. Under a 1966 amendment to section 702 of the Housing Act of 1954, as amended,[115] funds allocated by the General Assembly to study state statutes affecting local government can be matched three for one by the federal government.

The Commission on Local Government of the Missouri General Assembly undertook a revision of state statutes affecting local government in 1964. A series of hearings were held throughout the state, and a preliminary report was published.[116] The work was not completed because the commission was hindered by budgeting and staffing problems. Missouri municipal officials have long urged action in this area. The official policy statements of the Municipal League for 1965, 1966, and 1967 urged the establishment of a comprehensive program to codify and modernize statutes affecting local government.[117]

The total project is estimated to take two years, with recommendations ready for the 1969 state legislative session. During the first few months of the project, major effort will be concentrated upon defining issues, establishing a broad foundation for the project, and determining the areas of concern. This period will also be devoted to basic research into the Missouri statutes to determine precisely what the statutes contain and how they should be organized. Attempts will also be made to put the local government statutes on computer tapes and to make printouts of these tapes available to local government officials.

During the second six-month period of the project, major effort will be concentrated on specific problem areas that are discerned during the first six months. It is anticipated that these problem areas will include home rule, taxing powers, municipal structures, jurisdictional disputes among various units of local government, problems of intergovernmental cooperation, and other problems of similar nature.

The second year of the project will be devoted to drafting necessary legislation to implement the results of the first year's study, particularly insofar as revision and modification of existing laws will be proposed, and also to codifying all the statutes relating to local government.[118]

---

115. The amendment to the Federal Housing Act of 1954 was introduced by Congressman Leonore K. Sullivan, a Democrat from St. Louis.

116. Biennial Report of the Commission on Local Government, for the interim between the 72d and 73d General Assemblies, January, 1965.

117. Missouri Municipal League, 1965-1966 Missouri Municipal Policy and 1966-1967 Missouri Municipal Policy.

118. The Office of State and Regional Planning and Community Development

## VIII. What Is Yet To Be Done

Missouri's local government will not be modernized overnight. Ingrained practices and suspicions resist change with a bulldog tenacity. Meaningful results will be achieved only by a dedicated but realistic approach to the total problem of local government. Limited efforts concentrating only on municipalities to the exclusion of counties and special districts or upon financial problems to the exclusion of organizational questions will, in this writer's opinion, fall short of the mark because of the complex inter-relationships between functions and structures found in today's local government maze.

Broad policy questions must be faced and decided before machinery can be developed for a truly modern, efficient system of local government —the type of system that will be capable of meeting, on equal footing with the state and federal government, the staggering problems and enormous opportunities of the age in which we live. Methods of adequate financing of local government obligations must be found. Consideration must be given to equalizing the assessment practices upon which local property taxes are based and to developing alternative methods to the property tax for financing local government.

More basic than this, however, is the question of the relevancy today of the constitutional and statutory tax and debt limitations imposed on local government. Where is the logic in a system which demands that local government be answerable for the increasing complexities of modern life yet be denied the full flexibility of financial planning by an arbitrary ceiling on fiscal power that is a throwback to the standards of the nineteenth century?

Even less evident is the logic in the present system of classification of cities and counties. Every municipality, regardless of size, faces substantially the same problems of finance, transportation, pollution control,

---

will coordinate this program with state agencies dealing with local government, with local governmental units and associations such as the Missouri Municipal League, with professional organizations such as the Missouri Bar, the City Manager's Association, and the County Judges Association, and with the legal and political science departments of the major colleges and universities in the state. Key members of the state legislature will also be involved in this project.

An advisory commission will be appointed by Governor Warren E. Hearnes to assist the Office of State and Regional Planning and Community Development in various phases of the municipal code study. The commission will be made up of experts in the field of local government, along with legislators and educators specializing in local government law. The resources of the universities will be utilized in this program, through their participation on the advisory commission and by means of consultative services to be furnished to the professional staff.

human resources development, and educational adequacy. The difference is one of degree. The quality of life will be the measuring rod of the future in large and small communities alike. Why limit the power of municipalities to influence this quality by a complex classification system based on apparently arbitrarily-drawn population dividers?

A third question may be asked. How long must local government be required to go to the state legislature for authority to take steps to solve new or different local problems that may not be covered by existing statutes? What is the justification for continuation of the nineteenth century rule requiring local government to seek statutory authority from the legislature for anything not specifically granted local government? The stifling restrictiveness of this rule seriously hampers any truly creative or innovative approaches to modern government by local officials.

Finally, the question may be asked whether the proliferation of special districts, resulting mainly from the restrictions on local government discussed above, is not creating more potential chaos and inefficiency than the systems these special purpose plans attempt to circumvent. Lacking the broad base and comprehensive, though limited, powers of a municipality, special districts are adding additional layers of financial and jurisdictional burdens on an already shaky foundation. Should not the creation of additional districts, and the continuance of present ones, be subjected to some sort of impartial review and evaluation process in order to measure the contributions of these districts against the standards of improved quality demanded today?

Questions of this nature do not have simple answers. They are controversial because they challenge existing systems. They have been asked before and they will be asked again with increasing frequency. Sooner or later they must be answered—the sooner the better.