Home Rule Analysis (Municipal and County)

Arey White

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HOME RULE ANALYSIS
(Municipal and County)

Historical Significance
Strengths and Weaknesses
Florida Evaluation
Duval-Jacksonville Commentary

LOCAL GOVERNMENT STUDY COMMISSION OF DUVAL COUNTY
910 American Heritage Life Building
Jacksonville, Florida

Prepared by Staff Associate Arey White
March, 1966
# States Having Some Form of Home Rule

Constitutional – indicated by C  
Legislative – indicated by L

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Home rule is an inherently relative concept. But other factors also have complicated the defining of the term. First, state constitutions define home rule in vague and differing terms; to determine local affairs and government (Wisconsin); to exercise the powers and authority of local self-government (Pennsylvania); to frame a charter for its own government (Oklahoma). Second, home rule, usually applied to municipalities alone, has never been extended to all of a state's local units. In Missouri home rule is extended to cities with population over 10,000; in Arizona, to cities over 3,500; and in Colorado, to cities or towns of 2,000. Third, not all constitutional home rule provisions are self-executing or fully utilized. Here the attitude of the legislature is critical for should "the legislature ...[be] determined to retain control of municipal affairs, it can find ways to evade more or less completely the home-rule section of the constitution..."[2] Fourth, home rule power is given to local governments only over 'local affairs'. But how and to what extent can 'local affairs' be differentiated from state affairs? Courts have been called upon to make such determinations. Fixing any precise and definitive line of demarcation between state and local affairs has been impossible because "[there] is no clear delineation between state and local powers; interpretation varies from state to state, from time to time."[3]

Another difficulty in defining home rule stems from the fact that the concept is generally thought of in its historic sense rather than its practical sense of today. Historically home rule was an answer to domination of municipal affairs by state legislatures. Its purpose was to "prevent legislative involvement in such politically pregnant processes as the control of local police forces, construction of local public works, grant of utility franchises and use of the city payroll as an outlet for party patronage."[4] Emphasis was put therefore on curbing excessive powers of state legislatures, but little thought was given to an expansion of the powers of local governments in general. In certain large cities like St. Louis and New York, attempts were made to broaden local control over local affairs. But at that early date, little consideration was given to the idea of giving all or most local governments any significant power over their own affairs. Today the real objective of home rule is not necessarily to curb state legislative power but to give local governments the power necessary for them to meet their growing local problems. Although the concept of home rule has thus shifted from negative to positive, the thinking of home rule is still based on its negative emphasis. This conflict of negative and positive necessarily adds to the difficulty of defining home rule.
Before home rule, cities operated under legislative charters which were of two types. One was the special charter for a particular city; the other was a general charter for a group of cities or all cities. But government by legislative charters led to extensive legislative interference in city affairs, a "rigidity in municipal governmental systems," and the inability of rural legislatures to understand city problems. In 1858 Iowa adopted home rule by statute. This ineffective attempt to inaugurate home rule was repealed shortly thereafter. Missouri gave home rule its real start in an 1875 constitutional amendment providing home rule for cities with 100,000 population or over, with particular provisions for St. Louis. Constitutional home rule was adopted by three states, California, Washington and Minnesota, before the turn of the century. By 1915, nine other states had joined them. Today, thirty-one states have some kind of constitutional provision for home rule. Ten of these thirty-one have either adopted or revised existing constitutional home rule provisions since 1950. This would tend to refute the idea that the home rule "movement, once so promising, has not spread because of the growing complexity of state-local relations in fields of mutual interest." Indeed it would seem that the growing problems of urban areas have created a need for some kind of local control of government - a need so great as to overshadow the problems of state-local control.

Two elements of the early period of home rule are worth noting, mainly because of their continued use today. In 1897 an amendment to the Ohio constitution required the state legislature to group cities by population into seven classes. The number of classes was so large that the legislature could manipulate the population requirements of the classes so that the five largest cities were in classes by themselves and the other cities were in the remaining two classes. Thus the legislature was able to continue to dominate and control municipal affairs, the very thing the classification plan was designed to prevent. Today the classification plan is used by many states with and without constitutional home rule. Most states have reduced the number of classes and have avoided much of the difficulty presented by the early Ohio plan. New York added a new dimension to home rule with the optional charter plan. The state legislature was to provide model charters for the different forms of municipal government. Communities could then vote on charter revision. They also chose a board of freeholders to study the problem, choose the best optional charter for the community and offer it to the electorate for their approval.
This gave communities at least some participation in the selection of the form and structure of their local government. In some areas the legislatures designated on the basis of population which charter a community was to have. (11)

Home rule traditionally has been granted in three ways, constitutional provision, legislative act, and constitutional provision requiring legislative implementation.

Although constitutional provisions for home rule vary from state to state, most have some points in common. They are (1) authority delegated to municipality to frame, adopt and amend a charter for local government; (2) general or specific expression of powers of municipalities; (3) supremacy of state constitution and laws over charter powers; and (4) a prohibition on the state legislature to incorporate municipalities by either special or local acts. (12)

Self-executing constitutional home rule is the most recommended of the three methods for granting local self-governmental powers. This method allows municipalities to frame and adopt charters, without enabling state legislation, according to procedures set in the constitution. States with self-executing home rule provisions are Arizona, California, Colorado, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Utah and Washington. (13)

The purposes of constitutional home rule are perhaps the best explanation for its high recommendation in general and that of self-executing constitutional home rule in particular. They are "to give a broad measure of self-government to cities in matters of local concern...to make it less necessary for cities to make repeated requests of the state legislature for additional powers...[and] to make it more difficult to retract what has been given." (14)

While constitutional home rule is recommendable, it does have serious limitations. One is the predication of the source of power not as constitutional but as legislative. In such cases little distinction exists between a municipality's legal status in a constitutional home rule state and in a nonhome rule state. In neither case is the concept of state supremacy substantially impaired. (15)

Another limitation is the requirement that local charters or amendments thereto must obtain legislative or executive approval before they can be put into effect. Six states recently have had such requirements. Arizona, Louisiana, Michigan and Oklahoma required approval of the governor. In California legislative consent was necessary and in West Virginia the attorney general's approval was required. (16) There are other limitations which, like
the two previously mentioned, apply to both constitutional and legislative home rule. They are a "reservation of the legislative power, by general laws, to legislate in areas of municipal concern ...requirement that local laws or ordinances shall not be in conflict with general laws...[and] constitutionally imposed or authorized limits on municipal powers of taxation and incurrence of indebtedness..."(17)

Legislative or statutory home rule is provided for exclusively by the legislature. It is generally considered to be the least desired type of home rule, especially because of the ease with which it could be taken away by the legislature by either repeal of the grant or by subsequent overriding state legislation. Seven states have legislative home rule, (Georgia, Idaho, Iowa, Mississippi, New Hampshire, North Carolina, South Carolina.)

Constitutional home rule provisions requiring some type of enabling legislation, the third method of granting home rule, are designated as either mandatory or permissive. Under mandatory home rule legislative action implementing the constitutional principle of home rule is required. (Michigan, Minnesota, Louisiana, West Virginia, Wisconsin.) Permissive home rule leaves the enactment of enabling legislation strictly to the discretion of the state legislature. (New York, Washington, Pennsylvania are examples.) This method allows legislatures to ignore constitutional home rule provisions. A good example of this is Pennsylvania. Enabling legislation for a 1922 constitutional home rule provision was not enacted until 1949, and then it was made applicable only to the city of Philadelphia.(18)

Throughout its use home rule has been hamstrung by the problem of defining separate areas of state and local concern. The need for such an allocation was created by the idea or dream that there are substantial areas of complete autonomy for each level of government -- national, state and local. The increasing complexity of life today and the resulting growing interdependence of governments should have dispelled this dream, but it has not. This desire for complete local autonomy has resulted in a false and necessarily insecure basis or reason for home rule. Instead of looking forward and preparing for the inter-workings of interdependent governments, proponents of home rule looked inward and sought to obtain, at the local level, complete power for power's sake. Such an attitude truly "represents the wrong emphasis at the wrong time;"(19) and is more detrimental to home rule and its future today than it was in 1875. It has brought forth such evaluations of home rule as the following:
There was, and still is, that strange perversion of the principle of home rule which makes of every incorporated city, village or borough, no matter how young or insignificant, an impregnable fortress within which opposition to integrated metropolitan government can entrench itself. \(^{(20)}\)

In the past the problem of defining powers simply overwhelmed both proponents and opponents of home rule. Lists of separate powers were compiled in the hope of reaching some kind of consensus as to which powers belonged to which government. The following should provide evidence of the extent to which scholars were concerned over division of powers and of their inability to reach any meaningful conclusion. Eugene McQuillen, in his book *The Law of Municipal Corporations*, cites as matters of local concern: "street construction, liens for sidewalk construction, special assessments for improvements, maintenance of sewers and drains, parks and playgrounds, eminent domain, providing water, light and other utilities, municipal officers, municipal taxes, forms of local government, salaries of employees." Matters for the state are: "administration of justice, the maintenance of a police force, fire protection, public health, sanitary regulations, conservation of resources, education, neglected or delinquent children, elections, public records, control of streets and traffic, public utility rates, conditions of work for municipal employees, boundaries, indebtedness and taxation." \(^{(21)}\) In his *Law and Practice of Municipal Home Rule, 1916-1930*, Joseph D. McGoldrick gives his lists more succinctly. Public utilities, courts, annexation, and education are state matters to him, while forms of government, police, local officials, zoning, general police power and local health, safety and welfare are matters of local concern. He goes one step more in saying that no consensus existed for such things as eminent domain, taxation, claims, special assessments and indebtedness. \(^{(22)}\)

There are two principal ways in which states have sought to cope with the problem of division of powers. One way is to define and list the powers delegated to local governments by home rule provisions. Colorado and Utah are states that use this method. (Colorado Constitution, Article XX, Section 6 and Utah Constitution, Article XI, Section 5.) The other way is to state in broad and general terms the home rule powers given to local governments to provide ordinances for "local affairs and government" or municipal affairs." Both methods present serious and limiting problems. Criticism of the first method is that any such definition or listing is neither definitive nor exhaustive. Furthermore the problems
of our expanding and changing society tend to outdate any such listing, making it increasingly useless. The second method is no more successful than the first, for it leaves "the division of powers in so much doubt that extensive litigation is required to interpret what is a local and what is a state power." (23) In the final analysis the courts are called upon to render an interpretation of state and local powers regardless of which method of defining power a state chooses.

Leaving the matter in the hands of the courts has several disadvantages. First of all is the permanency of these court decisions. Today's court decisions are constantly reversed by the changing concepts of state and local concerns. Second, such a move places too much power in the hands of judges. A "determination of the actual extent of power to be exercised is wholly a question of policy and not at all a question of law" and we do not choose our judges to make "public policy on the local level." (24) The third point is that courts in the past have tended to rule against local governments. They adhere to the strict interpretation of local powers that is stated in the "Dillon Rule", a principle of municipal corporation law first stated by John F. Dillon, a 19th century Iowa judge. It "holds that a municipality can exercise only those powers that: 1) are expressly granted or that 2) are implied in or incidental to those expressly granted, or that 3) are essential for the purposes of the municipal government." (25) If there is any "reasonable" doubt, the decision is for the state. The resulting restriction of authority of local governments is evident in several states, among them Ohio, Michigan, Rhode Island and Wisconsin. (26)

There are some court decisions that have tended to strengthen municipal home rule. In one such case in 1948 (City of El Paso v. State, ex. rel. Town of Ascarte), the Texas Supreme Court "interpreted a home rule provision as conferring residual powers upon cities. A home rule city ... acts by authority of its constitutional powers and not through powers assigned to it by the legislature." (27) In another case (La Fleur et al vs. City of Baton Rouge, Nov. 15, 1960) the First Circuit Court of Appeals in Louisiana ruled that Baton Rouge, with its constitutional home rule provision, need not comply with pay for city firemen set by state legislation. Part of the decision is worth noting:

It is difficult to conceive how the structure and organization of the fire department could be effectuated by the City of Baton Rouge without giving particular consideration to the salaries to be paid.
to the firemen. Since the aforesaid constitutional provision reserves all matters of structure and organization exclusively to the defendant, City of Baton Rouge, it follows that the question of pay of a fireman, being a matter of structure and organization as distinguished from a power or function, is reserved exclusively to defendant herein. (28)

But perhaps the most significant of recent pro-home rule court decisions was that handed down in 1962 by the Oregon Supreme Court. The case (State ex rel. Heining v. City of Milwaukie) involved a 1959 statute that required civil service systems for firemen employed by any political subdivision with four or more full time firemen. In denying the statute’s application to cities, the Court said:

We now expressly hold that the legislative assembly does not have the authority to enact a law relating to city government even though it is of general applicability to all cities in the state unless the subject matter of the enactment is of general concern to the state as a whole, that is to say...is a matter of more than local concern to each of the municipalities purported to be regarded by the enactment. (29)

Unfortunately such positive decisions are the exception instead of the rule. And until such decisions are more consistent and extensive, the courts must be regarded as an enemy by home rule proponents.

Thus the emphasis on the problem of diversion of powers between state and local governments has and will continue to lead to increasingly difficult tangles to be worked out by home rule advocates. This misdirection must be corrected by removing the wrong emphasis, the demand to do the impossible. Instead of being concerned with any kind of absolute separation of powers, home rule proponents should turn to strengthening local governments so that they may be more effective partners with state and national governments in matters of concurrent concern.

In order to strengthen local governments, steps soon must be taken to increase local control over local taxation. Although home rule provisions relating to the form and structure of local governments have been generally the most accepted and recognized of home rule powers, provisions relating to revenue have been the ones most consistently blocked by both the legislatures and the courts. Such opposition has prevented home rule from helping local
governments become effective, responsible units for the handling of at least some local problems. Thus while local governments have been called upon increasingly to provide more and more local services, the sources of revenue which could enable local government to act have been pre-empted by national and state governments.

Complete freedom with respect to taxation is neither desirable nor feasible since local governments are political subdivisions of the state. But some kind of revision is necessary in order that local governments may meet the needs of those they serve. This is true for all local governments, not just those with home rule, for while states give local governments the right to tax property, "this right is hedged about with many restrictions that determine the basis of property valuation, the rates of tax that must be levied, and the methods of collection and enforcement."(30)

Revenue and taxation for home rule governments, illogically, almost always are even more restricted. Constitutional limitations on tax rates and municipal indebtedness are areas which illustrate this point most clearly. Some states specify legislative power to set such limitations directly in their constitutional home rule provisions (Ohio, Article XVIII, Sec 13; Nebraska, Article XI, Sec. 4; West Virginia, Article VI, Sec 39a). Other states fix such limitations in the constitution itself (Texas, Article XI, Sec. 5; Wisconsin, Article XI, Sec. 3). These limitations are directed mainly at ad valorem property taxes and generally are not factors in setting municipal powers in the nonproperty tax field. "However, to the extent that the tax and debt powers are either constitutionally proscribed or legislatively imposed through constitutional directive, municipal autonomy in the revenue field is severely circumscribed."(31) And while the limitations themselves present a problem, the fact that these often rigid tax and debt limitations "bear little relation to present-day conditions..."(32) compounds the revenue problems of local governments. Finally, court decisions have been an important factor in restricting home rule power in the revenue field. "In states where...[constitutional home rule] provisions have been effective in increasing municipal revenue powers, particularly in California...this has been achieved by judicial construction rather than by express constitutional language."(33)

California can perhaps be pointed to as the best example of effective constitutional home rule in the revenue field. Local autonomy in revenue matters is considered to be almost complete. Unlike other states, California lacks constitutional provisions
for the legislature to enact by general laws provisions for municipal affairs or for any "specific reservations of legislative control in the area of revenue." (34) California's success can be attributed, at least in part, to such omissions and to a rather liberal judicial interpretation of the revenue problem.

Of particular interest is California's substantial municipal autonomy in the nonproperty tax field. Judicial decisions have interpreted taxation as a "municipal affair" whose power comes specifically from the constitution. Furthermore, a municipal charter is not considered a grant of powers, but a limitation on powers.

The legal effect of these principles is that (1) statutory authorization for the imposition of nonproperty taxes is unnecessary, and (2) absence of charter authorization does not preclude the exercise of the taxing power unless the charter itself contains a limitation. Under this liberal approach, California cities have successfully levied numerous types of business, privilege, occupationa, and excise taxes. (35)

Today thirty-eight states have some form either of constitutional or legislative home rule. Of these, seven have only legislative home rule, twenty have only constitutional home rule, while the remaining eleven have both. Further classification reveals that of the thirty-eight states, fourteen have both city and county home rule. The other twenty-four states have only municipal home rule. In the past municipal home rule was more popular, as seen by the fact that by 1954, two-thirds of United States cities with 200,000 or more population had home rule. By contrast, it is only recently that county home rule has come into prominence. Of the fourteen states having county home rule, ten have adopted it since World War II. County home rule's rather recent popularity and acceptance questions the viability of municipal home rule and in so doing requires a comparison of the two to determine which it should be -- municipal or county home rule? But there is a third alternative, no home rule. Because of this, an examination of county home rule necessarily must be part of a critical look at home rule itself.

The major criticism of home rule is that it has not produced the results its advocates promised. But just what was expected from home rule? The American Municipal Association states the major objectives of home rule as follows: "To prevent legislative interference with local government, to enable local governments to
to adopt the kind of government they desire and to provide local
governments with sufficient powers to meet the increasing needs
for local services."(37) The results of home rule have fallen far
short of these stated objectives. But these results are not the
product of home rule but of forces in almost complete power work-
ing against home rule. Therefore the results should be seen not
as proof positive against the principle of home rule but as indi-
cations of areas in which home rule must be re-evaluated and eith-
er supported or abandoned.

The strongest point in favor of home rule "is that political
power should be divided in our society."(38) This is so despite
the impossibility of specifically designating certain governmen-
tal functions to each level of government alone. Self-determi-
ation is still a vital and important part in the expanding role of
government today. Instead of negating, the tremendous size and
scope of government today emphasizes the point "that the closer
those who make and execute the laws are to the citizens they rep-
resent the better are those citizens represented and governed in
accordance with democratic ideals."(39) It is at the local level
of government that this self-determination is and can be expres-
sed most completely. Home rule is one method for providing for
such expression.

There are other more specific arguments for home rule. One
is that while there are problems common to urban areas, problems
common to rural areas, and some common to both, there are no so-
lutions common to all. For each county, city and town there is a
unique solution for its apparently common problem. Other levels
of government are simply too large and too removed to be able to
adequately comprehend the particular circumstances surrounding a
particular community's ills. Only through the freedom and respon-
sibility of home rule can a community use the resources offered
to solve its problems.

Another advantage of home rule is that it has provided for
experimentation and variations in the structure of local gover-
ment. This is of singular importance today when increasing ur-
banization has posed new problems and required changes in munici-
pal government to meet these problems. Home rule is of value here
because it permits charters to be made specifically to meet a com-
community's needs and adds the element of flexibility, missing from
legislative charters, to enable the community to cope with its
changing needs. This individuality and flexibility is needed par-
ticularly in large cities and urban counties where
special difficulties encountered...have increased the desirability of the city's [or county's] right to experiment in the matter of structure and organization and thus enable...[the city or county] to take advantage of new techniques and developments. Any system of legislative control which substantially withholds this power of experimentation from the hands of citizens most concerned diminished the efficiency of local government and represents a denial of democratic theory. (40)

It may not be a denial of democratic theory, but the "investing of powers of local government in a central state legislative body, far removed in interest, knowledge and experience from the needs of municipal government...is...arbitrary...unrealistic... [and] destructive of the aims of good government." (41) Home rule would not only put the power of local government in hands of more experienced and interested people, but it would also bring the power to the problems quicker. Without home rule, local governments must wait until the legislature is in session to have their problems considered, much less solved. This is of critical importance in most states for only 19 states have annual legislative sessions. Furthermore home rule would help relieve legislatures of much of the burden imposed by numerous and time consuming local bills. In many states the adoption of home rule has resulted in a significant decrease in the number of local bills passed. In Kansas 52 'city bills' were enacted in 1957 and 48 in 1959. With home rule the figure dropped to 17. (42) In Connecticut the number of local bills dropped from 234 in 1957 to 76 in 1961. (43)

As mentioned before, these results are but indications of areas where the home rule principle must be re-evaluated and either supported or abandoned. Such an examination was made in 1953 by Jefferson B. Fordham for the American Municipal Association. The result was a set of model constitutional home rule provisions which set forth a "'local federalism' formula, whereby home-rule cities would exercise all powers which are not denied them by charter, or denied them by statute, and which are within such limitations as may be established by statute." (45) In the words of the provisions "the power is there unless clearly denied by positive enactment." (46) The provisions recognize the impossibility of distinguishing between state and local powers by simply putting aside the necessity for making such a distinction. Furthermore the provisions are designed to meet a problem basic to home rule, i.e., the making "of every incorporated city, village or borough, no matter how young or insignificant, an impregnable fortress
within which opposition to integrated metropolitan government can entrench itself.\(^{47}\) The introduction to the provisions states this most clearly:

> It is designed to give practical expression to genuine home rule policy without exalting local independence in fixed geographical areas to the extent of materially hampering the making of provision for effective organization and authority to perform needed governmental functions in the state.\(^{48}\)

While the American Municipal Association's provisions are realistic and forward looking, they take no notice of the problems and the possibilities of county home rule. Although county home rule was constitutionally adopted as early as 1911 (Calif.) it gained little acceptance until fairly recently. One reason for its lack of early approval was its marked difference from cities. Cities were economic, social and cultural units created by economic forces and they functioned to meet the local needs of their people. On the other hand, counties were created by states to serve as local administrative units for state responsibilities. It was, and still is, argued that since counties' "purely local functions have been assigned largely as a matter of convenience ...the home rule argument loses a great deal of its force when applied to counties."\(^{49}\) But such a statement fails to take into account the true character of urban counties today. Urban growth and problems have not been confined by city limits but have spread to adjacent areas. The result is that these areas are now metropolitan or urban counties, not cities, yet they are called upon more and more to provide its people with municipal type services. It is like trying to feed a giant with a baby's spoon. Most counties are ill-equipped to meet such demands. And if it is that the counties in the future must provide such services, some change will have to be made so that county government will be able to so function.

The growing urban areas and their problems have increased the desirability of county home rule in another way. Just as this growth has resulted in more responsibility for counties, so has it increased the responsibility of the state and the nation. The very size of the problem means that one single level of government cannot handle the problem—all must work together for a successful solution. Here the fact that counties were created by and for the state is an advantage, for it means that counties and the state, with already existing channels of communication and interaction, will be more prepared and, hopefully, willing to work together on
common problems. County home rule would strengthen counties and help them be a more effective part of the continuing relationship of the state and its counties.

Arguments Against County Home Rule

1. Both urban and rural counties need to be controlled by the state legislature so that state-wide solutions may be applied to problems common to all urban counties. In the past states have not met "the problems of their urban areas, but if they cede power to do this by permitting home rule they will never be motivated to come to grips with state responsibility for helping effectuate orderly urban and industrial development" since they will no longer have the "power to legislate over metropolitan area matters."(50)

2. Municipal home rule has caused many of today's problems. Why expand these problems in the future with grants of county home rule? (51) Over one-third of the standard metropolitan areas in the United States are composed of more than one county and indications are that the number of such areas will increase in the future.(52) In these situations any solution on a county-wide basis would be far too limited. Here county home rule would tend to impede rather than facilitate solutions for local problems by creating several units of power in one metropolitan area, any one of which could thwart area wide actions.

3. County home rule may be obsolete or outdated, even at this relatively early stage, as a solution to many problems of local government. More research and study of metropolitan area problems and their possible solutions is needed before advocating one as the solution, especially before declaring county home rule to "be a panacea for the solution of all ills of urban area government." (53)

Arguments for County Home Rule

1. There have been increased demands on county governments for local services. Unfortunately counties are ill-equipped to provide such services. County governments need to be reorganized and strengthened to meet these demands and to "obviate the necessity of establishing a third level of government or a super government to administer county-wide functions."(54) Other methods have tried to solve the problems of county governments without any real success. One such method is the independent special service district. In spite of isolated achievements, "the single
purpose district is still a single purpose district and is, by its nature, forever doomed to failure in solving general metropolitan problems." (55) Cooperation is another method which has had limited success. While such a method "can help to make life in a metropolitan area somewhat more tolerable - as where a core city sells water at double the regular city rate to its suburbs" it does not tend to lead "to the establishment of a strong area-wide government... [and] may delay indefinitely the attainment of that goal by diminishing the popular demand for it." (56) It is obvious that some kind of solution is needed that is area-wide in scope. County home rule is one method which could deal with area wide problems.

2. Another argument for county home rule is stated best in the words of Gladys Kammerer:

Democratic theory decrees that power should rest in the local electorate to frame a charter of government best suited to its own needs for management... Power should be commensurate with responsibility and if responsibility has become county-wide in scope as to many services, sufficient authority must be given to the county electorate to provide adequate governmental machinery to solve its problems. (57)

3. Many problems confronting urban counties demand a county-wide solution. Anything less would result in an uneconomical and inefficient provision of uncoordinated services. (58) This is of particular significance with reference to small municipalities and unincorporated areas that lack the finances to provide the needed urban-type services. The county's more extensive tax base brings demands for such services to the county. It is only "on a county-wide basis under unified management" (59) that such demands can be met economically.

4. Urban problems are and will be dealt with through the combined actions of national, state and local governments. "Home rule principles offer the only possibility of retaining a local voice in the affairs of these huge and permanent national programs." (60) County home rule is better equipped to do the job than municipal home rule because it is larger in scope and can speak for the whole area affected instead of a fragment of it.

Both municipal and county home rule have their strengths and weaknesses. Their most obvious strength is a fact basic to the whole concept of home rule, i.e., that areas and communities each
have problems and solutions unique to themselves. Moreover these problems are never stable but are in a constant state of change. No one solution or form of government is completely suited for all communities or even for a single classification of communities. Local governments must be flexible enough to adapt their government to fill their needs and meet their problems. Often state or national government aid will be necessary but the local implementations of such aid must be adapted to the particular situations of each community; otherwise the aid will be wasted. And this is the strength of home rule - that there are as many faces and expressions of home rule as there are communities to use it.

Thus the answers to the questions of home rule or no home rule, or county or municipal home rule cannot be given solely on the basis of an evaluation of home rule itself. The decision must first of all be based on the singular needs and circumstances of the community involved.

Florida

Technically Florida has had legislative home rule since 1915. According to Sec. 166.01-166.15 Florida Statutes, every city or town may alter or amend their charter. Realistically this provision for municipal home rule is and has been meaningless, for it means that cities and towns are permitted only to reshuffle and reorganize what they already have. If the power to perform certain functions was not given to a city or town in its original charter, then the city or town may not perform such functions. Furthermore, cities and towns have been reluctant to make use of the powers delegated in Sec 166.01-166.15 because it would take only a special act of the legislature to overrule it.

Home rule really came to Florida in 1956 with the adoption of a home rule charter for Dade County. (Florida Constitution Article VIII Sec. 11). Municipal as well as county home rule was provided for in Sec 11 (1)(g) which states that the county home rule charter would "provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter." Of particular importance is the way Dade County's charter seeks to handle the problem of overlapping home rule jurisdictions.

Although the charter "reserves to the voters of the municipalities the sole right to abolish the municipality, it permits the county to set minimum standards for the performance of any service or function and to...[assume the performance of] a service within
any municipality which fails to meet the standards." Thus the charter would seem to reduce "drastically the amount of legal municipal home rule authority in the area of substantive powers."(61) Dade County's solution of subordinating home rule powers of municipalities to the home rule powers of the county, if effective, would tend to minimize the danger of municipal home rule's creating islands of power which could continually thwart any county-wide attempts to handle local problems.

Unfortunately Dade County's home rule charter has provisions which tend to minimize effective home rule. At least similar provisions in the past have had the result of weakening home rule. One such provision gives the county governing body (the Board of County Commissioners) "full power and authority...to levy and collect such taxes as may be authorized by general law and no other taxes..." [Sec. 11(1)(b)]. Lack of sufficient home rule power in the taxing field has already been pointed out as a severe handicap, an almost prohibitive factor, in obtaining meaningful home rule. Another limiting provision is Sec. 11 (6):

Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

Many of Florida's 67 counties have ceased being just an administrative district for the State and now function more as a service unit to provide for local needs. But the counties generally are not equipped to serve in this modern capacity. County officers are prescribed in sections 5(adopted 1900, amended 1944) and 6 (adopted 1914) of Article VIII of the State constitution. The power to determine and change powers and duties of county government mainly rests with the state legislature. And where
additional powers have been given piecemeal to counties, they have been unable to use them efficiently. The resulting confusion has brought forth this critique:

The constitutionally created elective county officers need not cooperate with each other and, indeed, lack any instrumentality over them for coordination of their work. The usual fragmentation of service functions...among commission members insures a lack of coordination similar to that prevailing among the elective officers. Each commissioner, in effect, may and often does go his own way in running his own set of services according to his own individual set of standards with little, if any, reference to the policies and actions of his fellow commissioners directing other services.(62)

Such a situation seems hardly capable of achieving the "unified coherent direction and management" especially needed by urban counties today.(63)

In addition to 67 counties, local governments in Florida include 366 municipalities and 264 special districts for a total of 697. There were in addition 67 school districts which would increase the total to 764.(64) The number of local government units in the state has grown continually in the last twenty years. There were 503 units in 1942, 616 in 1952 and 671 in 1957. The 1962 total broken down shows 67 counties, 310 municipalities, 227 special districts and 67 school districts. Not counted in the totals are 30 unincorporated areas having 1,000 or more population and more than 76 bodies, such as Jacksonville Expressway Authority, Fort Pierce Port Authority, considered to be subordinate of state or local governments.(65) The increase in the number of special districts is of particular importance in the solution of urban area-wide problems. At best special districts represent a piece by piece, fragment by fragment approach to such problems, the antithesis of the closely coordinated actions required for solutions to such area wide problems as highways, housing and schools.(66)

Incorporation of cities in the state is through charters granted by special acts of the legislature. This means that numerous 'local bills' concerning a change in a charter or a local matter must be acted on at each session of the legislature. Despite the practice of summarily passing all such 'local bills' that have the approval of the legislative delegation concerned,
these bills do take up valuable legislative time in the limited biennial sessions. The sheer number of such bills should be indicative of that. The following is a list of the number of General and Local and Special laws passed during the last regular sessions of the state legislature:

<table>
<thead>
<tr>
<th>Year</th>
<th>General</th>
<th>Special and Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>586</td>
<td>1832</td>
</tr>
<tr>
<td>1963</td>
<td>574</td>
<td>1473</td>
</tr>
<tr>
<td>1961</td>
<td>539</td>
<td>2476</td>
</tr>
<tr>
<td>1959</td>
<td>523</td>
<td>1472</td>
</tr>
<tr>
<td>1957</td>
<td>523</td>
<td>1444</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2745</strong></td>
<td><strong>8697</strong></td>
</tr>
</tbody>
</table>

The overwhelming predominance of Special and Local laws is evidence that some solution such as home rule is not only advisable, but necessary. Furthermore, the five counties of Brevard, Hillsborough, Duval, Orange and Pinellas account for 1295 of the 8697 Special and Local laws. And the number of such laws for these counties is increasing. Duval and Hillsborough counts are proof of this:

<table>
<thead>
<tr>
<th></th>
<th>Duval</th>
<th>Hillsborough</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>86</td>
<td>86</td>
</tr>
<tr>
<td>1963</td>
<td>53</td>
<td>26</td>
</tr>
<tr>
<td>1961</td>
<td>56</td>
<td>129</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>302</strong></td>
<td><strong>Total 325</strong></td>
</tr>
</tbody>
</table>

This would be advantageous not just to local governments, but to the state as well, for it would mean that the legislature would have more adequate time to deal with major state problems.

Another problem in Florida, which almost begs for a solution, is the fact that state legislators, elected to deal with statewide problems, in fact control the local bills in the legislature and thus are the main determinant in strictly local matters. Gladys Kammerer considers this a violation of democratic theory. Essentially, through their control over local legislation and the mutual courtesy arrangements to pass all local bills, they are given power without responsibility. The electorate is usually too confused by a multiplicity of issues in a campaign and they need to weigh legislative records on a great variety of state issues to hold their legislators to account for sins of omission or commission on local government legislation. The voters are therefore
powerless to hold their state legislators accountable for failures by county officers to solve local problems aggravated by a refusal of the legislators to cooperate with the county officials. (67)

Home rule could curb such excessive control by returning significant power to local governments.

The situation and problems of local governments in Florida indicate a need for home rule. Examination of home rule in other states has led to these conclusions as to what Florida's home rule should include:

1) Home rule should be constitutional and self-executing.
2) Revenue and taxation provisions should be broad and realistic.
3) The legislature should classify municipalities into not more than four classes based strictly upon population.
4) The legislature should pass only general laws relating to municipal corporations.
5) The qualified voters of a community should be given the power to adopt, amend and repeal a home rule charter proposed by a local charter commission.
6) Home rule governments should be given power to exercise any function or power which the legislature has power to devolve on a non-home rule government, or which is not statutorily denied them.

Home rule for Duval County, or municipal home rule for its cities, is a complex question. Other than Jacksonville the remaining four municipalities are so limited in size that the need for home rule is not pressing. However, Jacksonville is continually hamstrung by lack of authority over purely local matters. Perhaps even more pressing have been the problems of the urban unincorporated area. The urbanized area immediately outside the Jacksonville city limits is now a bigger "city" than Jacksonville itself. While the city contains some 200,000 people, the adjoining area has in excess of 250,000. Virtually all of our growth is outside the city limits, (indeed the city declined in population from 1950 to 1960 while the county as a whole increased some 49%).

As pointed out previously, County government is ill-equipped to perform urban services. This has been repeatedly self-evident in Duval. The inability of our population to provide solutions
to our rapid growth has placed a peculiar burden on our legisla-
tive delegation. County residents in unincorporated areas have
grown to rely on the legislative delegation to protect their ob-
vious interests in the city of Jacksonville from which they as
citizens are disenfranchised from participating in. This watch-
dog role has seemingly resulted in city resentment which has led
to the city refusing to take initiative in new areas of endeavor.
The charge is often made that the city follows only the letter of
the law as written and does not on its own initiative strive for
a higher standard. This in turn has placed the legislative dele-
gation in the role of a disciplinary committee over the city — a
role they are obviously ill-equipped to handle by the very nature
of their part-time appointments, lack of staff, etc. (Interest-
ingly only one of our eight legislators lives within the Jackson-
ville city limits).

Home rule provisions are only effective if the local govern-
ment to which they apply is itself strong. The very essence of
home rule is self initiation. In this respect it is apparent that
in Duval County we have often failed to meet our problems — our
unincorporated area is but one manifestation of this. (Note that
home rule provisions sometimes include automatic annexation pro-
visions.) Schools, pollution, crime, slum abatement, etc. add to
a long list of local problems we have not effectively coped with.
In most instances we can only point the finger of blame at our-
selves. Thus, unless we can provide a system of government which
will dissipate our internal jealousy, and turn our government into
a viable progressive vehicle for action rather than a passive
space filler, home rule will be of limited value to us. Home rule
is a tool for exerting strong leadership and self determination
over local affairs. As a tool it is only as useful as the strength
of the craftsmen who utilize it.
Footnotes


3. Alderfer, p. 139


5. Collier's Encyclopedia (New York, 1965) XII, 218


7. Alderfer, p. 75

8. Graves, p. 709

9. Alderfer, p. 75

10. Graves, p. 701

11. Ibid, p. 703


15. Ibid, p. 211


17. Modernizing a City Government, p. 219


19. Graves, p. 704


21. Alderfer, P. 139
22. Ibid. p. 139

23. Gladys M. Kammerer, "County Home Rule, Civic Information Series No. 34, Public Administration Clearing Service of the University of Florida (Gainesville, 1959) p. 7

24. Adrian, pp. 159-160


26. Kammerer, p. 9

27. Graves, p. 704


31. Modernizing A City Government, p. 218

32. Graves, P. 707

33. Modernizing A City Government, pp. 306-307

34. Ibid., p. 217

35. Ibid., p. 299

36. Adrian, p. 156

37. Blair, p. 66


39. "Oregon Supreme Court Strengthens Home Rule", p. 497

40. Modernizing A City Government, p. 226

41. Ibid., pp 203-204


45. Modernizing A City Government, p. 222


47. Reed, p. 122

48. Fordham, p. 6

49. Macdonald, p. 68

50. Kammerer, p. 14


52. Kammerer, p. 15

53. Ibid., p. 15


56. Reed, p. 123

57. Kammerer, p. 13

58. "County Home Rule in Michigan Constitution", p. 41

59. Kammerer, p. 12

60. MacDugall, p. 35

61. Tollenaar, "A Home Rule Puzzle", p. 413


63. Ibid., p. 12
64. The Municipal Year Book (Chicago, 1964), p. 12


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