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Cover Page Footnote

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LOCAL FINANCES UNDER THE NEW YORK STATE CONSTITUTION WITH AN EMPHASIS ON NEW YORK CITY

FRANK J. MACCHIAROLA*

THE state of New York boasts a local finance article in its constitution that is unnecessarily cumbersome. The most salient features of the article are constitutional tax and debt limitations that in many ways have checked the power and growth of local governments, particularly that of New York City.

Intended as a means of securing sound financial management, the tax and debt limits, when effective, have actually operated to encourage evasion through bookkeeping shortcuts. In addition, the inability to raise additional revenue through increased realty taxes has actually served to constitutionally privilege landholders in the six largest cities of the state. The inability to plan long range, effective budgets—singularly a characteristic of New York City—is a product not only of poor management in the city, but of constitutional and legislative impediments as well.

I. CONSTITUTIONAL PROVISIONS ON LOCAL FINANCE

A. *The Origins of Tax and Debt Limits in the Constitution*

In the state of New York, constitutional provisions exist which restrict the powers of local governments to tax, and restrict local governments in the establishment of their debts. These restrictions are found in article VIII of the state constitution, a most confusing and detailed article that defies all constitution-drafting mandates of simplicity. The article boasts sentences of more than 100 words and a length equal to that of the United States Constitution. It is larger than the state constitutions of Rhode Island and Vermont. In comparison to local finance articles of other state constitutions, it offers broad and pervasive regulations equalled in size and scope only by those provisions on local finance found in the state constitutions of Alabama, Georgia and Louisiana.¹

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1. Ala. Const. art. XI, §§ 215-16; Ga. Const. art. VII, ch. 2-57; La. Const. art. X, §§ 6, 10, 13.

Article VIII has fifteen sections and a record of having been amended fifteen times in the twenty-seven years since it was approved by the voters in November, 1938.²

Thus, since the Constitutional Convention of 1937, the local finance article has been amended on an average of more than once in every two years. And in almost every instance, the amendment has made the article longer and more difficult to understand.

The 1937-1938 Constitutional Convention, which continued the previous debt and tax restrictions, was not working in an uncharted area. A debt limit had been imposed upon local governments in this state by the adoption in 1884 of a constitutional amendment based upon the belief that "constitutional debt regulations prevent municipal extravagance more effectively and add greater strength to municipal credit than do mere statutory regulations."³

2. The amendments are as follows: November 8, 1938, amending article VIII, section 7(a) to add as an exclusion from the New York City debt limit, funds expended for the acquisition of the transit system; November 8, 1949, amending article VIII, sections 5 and 7 to change the power of counties, cities, towns and villages to contract indebtedness, and excluding \$150,000,000 for hospital bonds from the indebtedness limit of New York City; November 8, 1949, amending article VIII, section 10 to change the limitations upon the realty tax levied by counties, cities, towns, villages, and certain school districts; November 6, 1951, amending article VIII, section 4 to restrict the powers of counties, cities, towns, villages and certain school districts to contract indebtedness and impose real estate taxes; November 3, 1953, adding section 2(a) to article VIII in order to extend the allowance of local indebtedness to water supply; November 3, 1953, amending article VIII, section 10 to change the powers of counties, cities, towns, villages and certain school districts to contract indebtedness and to raise tax rates on realty; November 3, 1953, amending article VIII, section 10 to change the amount raised by New York City realty taxes by permitting an increase in rates; November 8, 1955, amending article VIII, section 2(a) to increase the power of public corporations and improvement districts to provide for the conveyance, treatment and disposal of sewage and drainage, by permitting indebtedness for that purpose; November 3, 1959, amending article VIII, section 7 to allow New York City an additional exemption from its indebtedness limit, in the amount of \$500,000,000, for school construction; November 3, 1959, amending article VIII, section 1 to authorize counties, cities and towns to increase pension benefits for certain members of the police and fire departments and their widows; November 3, 1959, amending article VIII, section 1 to authorize that cooperative joint services be provided by municipalities; November 5, 1963, making stylistic changes in section 12; November 5, 1963, adding section 5(e) to article VIII to permit local governments to exclude certain debts from the debt limit for 11 years; November 5, 1963, amending section 1 to permit villages to increase pension benefits for retired members of the police and fire departments and their widows; November 2, 1965, amending article VIII, section 1 to permit New York City to increase pension benefits of retired members of the Department of Street Cleaning and their dependents. In 1955 an attempt to add to the exclusion of the debt limit for sewer purposes was defeated.

3. State of New York, Temporary Commission on the Revision and Simplification of the Constitution, Staff Report on Constitutional Debt Limits for Local Governments 1 (Staff Report No. 32, 1960) [hereinafter cited as Staff Report No. 32].

The underlying notion of such regulation was that public borrowing was not entirely good. It was a point of view shared by many other states and had been prepared for by an 1874 amendment to the constitution that had prevented local governments from incurring any indebtedness except for strictly public purposes.

Constitutional provision for statutory limits on the powers of local government to tax was placed in section 9 of article VIII of the 1846 constitution giving authority to the legislature, "to provide for the organization of cities and incorporation of villages and to restrict their powers of taxation." This article in the New York State constitution came at about the same time in which the emergence of the cities began to run directly counter to rural interests. According to one commentator, "a period of twenty-five years following 1855 is marked by extensive legislative interference on the part of the State government in local affairs of municipalities, especially New York City."⁴

B. *The Evolution of Modern-Day State-Local Fiscal Relations in New York*

The period of urban growth is not easy to characterize in a few short lines. It was marked, however, by a growth in the size of city populations that threatened the political balance between urban and rural interests. It was the age of the factory, where manufacturing predominance and industrial growth overshadowed farm produce. In addition, it was an era that would see new peoples, highly suspect for their foreign origins and lack of political maturity and independence, flock to cities and restructure urban political and social systems. State legislators, spurred on by the forces of tradition, viewing change with alarm and the cities as fertile areas for exploitation, began to concern themselves with municipal affairs.

Historically, New York City was one of the first cities in the nation to receive civil recognition. In 1665, Governor Nicolls gave New York City the status of an English municipal corporation,⁵ declaring, "inhabitants of New York . . . are and shall be for ever accounted, nominated and Established, as one Body, Politique, and Corporate." In 1686, Albany and New York received Dongan Charters attesting to their corporate recognition.⁶ In addition, early municipal government in the pre-Revolutionary War era was a dynamic one, performing many functions and providing many services as a result of having legal power to do so.⁷ In

4. Malone, *The Fiscal Aspects of State and Local Relationships in New York*, Special Report of the State Tax Commission No. 13, at 35 (1937).

5. 1 Colonial Laws of New York xiii (1894).

6. 1 Colonial Laws of New York 181-216 (1894).

7. See generally Peterson & Edwards, *New York as an Eighteenth Century Municipality* (1917).

many instances, New York City municipal government was far ahead of other municipal governments in terms of providing extensive services.⁸

It is not entirely fair, however, to conclude that some urban-rural difficulties did not exist prior to the era of the growth of the cities. Peterson and Edwards conclude that New York City "as an eighteenth-century municipality . . . was merely an agent of the provincial government."⁹ In that government as well, the "unfriendly attitude of the rural districts manifested itself especially in apportioning direct taxes among the several counties."¹⁰ They say:

From figures presented above it is evident that the city of New York contained considerably less than one-fifth of the total number of inhabitants of the province—a ratio which remained relatively constant throughout the later colonial period. But in decided contrast to this was the city's ever-rising quota of provincial taxation. For a time the assignment to the city varied from one-fifth to one-fourth, but gradually one-third came to be regarded as its regular portion.¹¹

This hostility continued into the early days of the Republic. According to another historian, "the post-war [Revolutionary War] era witnessed a struggle between up-state and the metropolis over the distribution of the burdens of taxation not unlike that in Colonial days."¹² But yet, this post-revolutionary period was one of dynamic growth under vigorous local government.

The rapid growth of the city during the period and the realization that this expansion would continue brought forth a program calculated to provide for future developments. In 1800 a movement was begun for a new city hall, and three years later the cornerstone of that edifice was laid. By the end of the century the corporation [New York City] decided to retain whatever common lands it still held for future public purposes. Similarly, it was determined to be more careful in the granting of water lots and to make sufficient reservations of these for future public docks and wharves. Elaborate road, shore, and docking improvements were initiated. Systematic numbering of houses was introduced in 1793. New parks at the Battery and the Fields were laid out; and to make way for the advancing line of settlement the work of filling up the Fresh Water Pond and draining the nearby swamps was started before the close of the century.

8. The Board of Aldermen set up a Mayor's Court to complement the judiciary set up under Dongan's Charter. See 1 Colonial Laws of New York 305 (1894). And city government provided municipal fire fighting equipment in 1648, watchmen in 1658, and lights for city streets in 1697. In addition to protecting persons and property, the city also engaged in various business enterprises. It took full advantage of the Dongan Charter powers to lay out and maintain streets, highways and water courses. 1 Colonial Laws of New York 183 (1894). At the same time, the provincial government largely restricted its concerns to economic matters and relations with the crown.

9. Peterson & Edwards, *op. cit. supra* note 7, at 234.

10. *Id.* at 236.

11. *Ibid.* (Footnotes omitted.)

12. Pomerantz, *New York an American City 1783-1803*, at 61 (1938).

Finally, in 1804 a new city plan was projected. All these undertakings emphasized the determination of the Common Council to meet the problems of a growing municipality.¹³

Yet, interference continued as "the legislature did not hesitate to regulate matters which it would appear fell within the competence of the city by charter grant."¹⁴ In terms of governmental structures, there was little protection afforded cities under the constitution. In the first half of the nineteenth century, the local municipal and county offices, previously appointive, were made elective. This was little protection, for "this lone restriction on the powers of the legislature did not prevent interference in the affairs of the cities as they grew in size and wealth, thus becoming tempting targets for rapacious and patronage-hungry legislators."¹⁵

With the constitutional change that began in 1846, however, the city lost more control over the management of its own affairs. This disability was felt seriously in the years just prior to the Civil War. According to some historians, "the chaotic condition of the city government underscored the need for reforms" and caused Mayor Fernando Wood, angered at the city's lack of power, to declare, "I shall not hesitate to exercise even doubtful powers when the honor and interests of the people are abused."¹⁶ Wood's frustrations were manifested more clearly with his plea at the outbreak of the Civil War that New York City secede, not only from the Union, but from the state as well.¹⁷

Thus, all cities of New York were restricted in their powers to raise revenue for city purposes and they had to rely eventually upon state funds to meet the cost of city services. With state funds has come state involvement and stagnation of effective representative government. It was said as far back as the 1930's that:

Not only are the cities bound by State action relative to matters of employee compensation, but they are dependent upon the central [state] government for numerous authorizations pertaining to matters essentially local in character. For example, between 1932 and 1935 New York City asked the Legislature to provide for the reopening of the budget, to consolidate the various purchasing bureaus into one department, to advance the date of tax collections, to lease the Bronx terminal market, to establish a court of domestic relations, and to merge all inspectional forces into the bureau of buildings. Several of these measures are patently administrative and as such should not even be referred to the city council much less to the legislative halls at Albany.¹⁸

This was the state of affairs that confronted the delegates to the 1938 Constitutional Convention.

13. *Id.* at 296.

14. *Id.* at 58.

15. F. Smith, *Judicial Review of Legislation in New York 1906-1938*, at 115 (1952).

16. Ellis, Frost, Syrett & Carman, *A Short History of New York State* 231 (1957).

17. Commager, *Documents of American History* 374 (6th ed. 1958).

18. Malone, *op. cit.* supra note 4, at 113. (Footnotes omitted.)

C. *The 1938 Convention and Fiscal Policy for Localities*

At the time of the Constitutional Convention, then, city governments, particularly New York City, were tied down by state controls coming not only from the legislature, but from the constitution itself. The two forms of regulation that had been in part responsible for that were the constitutional tax limit and the constitutional debt limit. Concerning constitutional debt limits, it has been said that "constitutional debt limits during the first 52 years of their operations [1884-1938] had on numerous occasions inhibited New York City and some of the other cities of the State from incurring further debts for the financing of needed projects."¹⁹

The staff of the Temporary Commission on the Revision and Simplification of the Constitution, which was to prepare for the never held 1957 Convention, investigated the history of the restrictions on the taxation of real property which had been imposed on local governments to foster sound management. Its report concluded that the tax limit acted not to affect finance during the period from 1884 to 1918, and when it later did, to do so in such a manner as to prevent "pay as you go" spending and place the cities in larger debt, moving them closer to the also restricting debt limits. The report declared: "Thus, in 1937, to any careful inquirer into the past operations of the constitutional tax limit in New York City the tax limit should have appeared as a dismal failure."²⁰

Many writers had been severely critical of both the tax and debt limits, and their objections were made known in great detail long before the Constitutional Convention. Spangler's report is typical in that it shows problems existing that are untouched by constitutional safeguards and protections in areas which provide no meaningful control on sound finance. He cites the ease of evasion and the difficulty of ascertaining the propriety of the borrowing exercise. He recommended, moreover, that such limits be no part of the constitution, but rather be determined by statutes.²¹

The question of the tax limit was also the subject of exhaustive study by fiscal experts prior to the 1938 Convention. The experts cited the arbitrariness of the system, and the ease of evasion through increased assessments, the encouragement of deficit spending by the larger cities, the discouragement of "pay as you go" financing, juggled accounts and the interference with sound budgeting practices. Spangler declared in 1932, in the conclusion of his report:

19. Staff Report No. 32, at 53.

20. State of New York, Temporary Commission on the Revision and Simplification of the Constitution, Staff Report on Constitutional Tax Rate Limits 40 (Staff Report No. 31, 1959) [hereinafter cited as Staff Report No. 31].

21. Spangler, Operation of Debt and Tax Rate Limits in the State of New York, Special Report of the State Tax Commission No. 5, at 35 (1932).

In short, the tax limit fosters the wasting, instead of the conserving, of public moneys, and leads to unsound budgetary and accounting practices. The only good that could come out of it would apparently be the forcing of local authorities to find new sources of revenue to supplement the general property tax, but after 47 years of trial it has resulted in no material progress toward that goal.²²

Antedating the Spangler Report was that of the Davenport Committee of 1919-1920 which urged "the repeal of all tax limitations" in the constitution.²³ The Sheridan Committee Report of 1924-1925 was critical of the way in which the constitutional system worked and the Mastick Committee of 1932-1938, in a series of reports, concluded that it would be fiscally unsound to restrict the New York City real estate tax limits in the constitution.

The recommendations made in these many studies were to fall on deaf ears at the 1938 Constitutional Convention. In matters fiscal, that convention followed two principles strictly. The first of these was that local governments would fall easy prey to fiscal irresponsibility if their powers were to go unchecked. The second was that the legislature as well could fall prey to political expediency and allow mismanagement to affect local government finance. Their responsibilities were to protect the local governments from themselves and from the generosity of the legislature. Thus, the delegates were hardly impressed with the wisdom of committee reports that had been highly critical of the constitutional methods of local finance regulation. The delegates were concerned with the effects of the depression under which the entire nation was suffering. They looked at shaky municipal credit and sought to bolster it. This was done by insuring creditors that rigid regulations were being imposed to prevent municipalities from defaulting on their obligations. They concentrated on preventing default and to that end restricted local government management. In addition, the convention delegates bowed to pressure from the property owners of the state who insisted on ceilings on the taxation of real property.

As to the effect of the scholarship of the period preceding the convention, a staff report of the Temporary Commission on the Revision and Simplification of the Constitution declared that "these critical conclusions by students of constitutional debt limits, however, seem to have had little effect upon thinking in this State. The constitutional debt limits continue to be regarded as important instruments for the promotion of economy in the operations of local governments and for the protection of municipal credit."²⁴

22. *Id.* at 207.

23. Special Joint Committee on Taxation and Retrenchment, *Retrenchment in City Government*, N.Y. Leg. Doc. No. 80, p. 107 (1920).

24. Staff Report No. 32, at 56.

It should be repeated again that the effect of such restrictions was to centralize control in the state government and to spark state action in the form of increased assistance to local governments. Thus, "local tax and debt limits when considered in relation to the responsibility the Constitution places on state authorities for the setting of adequate standards for such local services as education and welfare, lead almost inevitable [sic] to financial assistance in order to maintain these standards."²⁵ With state assistance have come inequities in the distributions to large cities in the state, notably New York City. This should be noted as a very great side effect of such restrictions on tax and debt, an effect which will be dealt with in more detail.

The Constitutional Convention, however, adopted a local finance article that was born in the days of primitive economics, nursed in the depression, and matured into a monumental tribute to piecemeal revisions.²⁶

In terms of the debt limit, the Convention set out to: make debt limits tighter, while at the same time make the pursuit of "pay as you go" policies of financing local improvements easier for the local governments; extend the application of debt limits as far as possible to all local governments with class variances in rates; set forth standards of debt incurrence; and detail regulations of debt limitations.²⁷

In terms of the tax limit, the convention set out to limit tax rates in areas in which these limits had already existed and, additionally, to extend the limits to areas where they had not been previously applied.²⁸

D. *Current Tax and Debt Limits*

Along with the pervasive scheme of debt and tax schedule restrictions as outlined in tables 1 and 2, article VIII includes additional restrictions. The underlying philosophy of these is that "the State clearly has a regulatory responsibility in this field . . . because injudicious borrowing policies and procedures are detrimental not only to the local communities involved but to the financial position of the State itself."²⁹ But the article does not give the complete picture of state regulation of local finance.

25. State of New York, Special Legislative Committee on Revision and Simplification of the Constitution, Staff Report on State Assistance to Local Governments 2 (Staff Report No. 11, 1958) [hereinafter cited as Staff Report No. 11].

26. Revisions were made in 1894, 1899, 1905, 1907, 1909, 1915, 1917 and 1919.

27. 10 New York State Constitutional Convention Committee, Problems Relating to Taxation and Finance 287-388 (1938).

28. Staff Report No. 31, at 57.

29. State of New York, Temporary Commission on the Revision and Simplification of the Constitution, Staff Report on Simplifying the Local Finance Article 1 (Staff Report No. 35, 1960) [hereinafter cited as Staff Report No. 35].

TABLE 1

CONSTITUTIONAL LIMITATIONS ON POWER TO TAX REAL PROPERTY*—as of January 1, 1966

<i>Type of Municipality</i>	<i>Per cent limitation on the most recent 5 year average of full valuation of real property</i>
<i>Counties</i> [62] in New York City	None
all others	1.50% to 2.00%
<i>Cities</i> [62] New York City	2.50% ¹
Cities (except NYC) with a population of over 125,000 (Albany, Buffalo, Rochester, Syracuse, and Yonkers)	2.00% ²
all other cities	2.00% ³
<i>Villages</i> [554]	2.00%
<i>School Districts</i> [66] (wholly or partly in cities having a population of under 125,000)	1.25% or 1.50% or 1.75%, subject to .25% raise if 60% of voters agree.

* In all municipalities, taxes for debt service on long-term debt and for budget appropriations for capital outlay are excluded from constitutional limitations.

1. New York City's limit includes taxes raised for *ALL* purposes—city, school and county.

2. Albany, Buffalo, Rochester, Syracuse and Yonkers limits include taxes raised for *TWO* purposes—city and school—but do not include taxes raised for county purposes which are subject to their own limits.

3. Village and other city limits include taxes raised for *ONE* purpose—city or village—but do not include taxes raised for school and county purposes.

An example of this is the housing exemption from the borrowing limits of article VIII. Section 4 of article XVIII provides:

To effectuate any of the purposes of this article, the legislature may authorize any city, town or village to contract indebtedness to an amount which shall not exceed two per centum of the average assessed valuation of the real estate of such city, town or village subject to taxation, as determined by the last completed assessment roll and the four preceding assessment rolls of such city, town or village, for city, town or village taxes prior to the contracting of such indebtedness.³⁰

The section states additionally, that “indebtedness contracted pursuant to this article shall be excluded in ascertaining the power of a city or such village otherwise to create indebtedness under any other section of this constitution.”

In addition to a constitution which does not deal with all matters of local finance in the Local Finance article, the framers of the constitution gave us an article that was unable to respond to the changing needs of the state. At the time that the constitution was being accepted by the

30. See note 2 *supra*.

TABLE 2
 CONSTITUTIONAL AND STATUTORY LIMITATIONS ON LOCAL BORROWING*—
 as of January 1, 1966

<i>Type of Municipality</i>	<i>Per cent limit</i>	<i>Constitutional</i>	<i>Statutory¹</i>
<i>Counties</i> [62] ²			
in New York City [5]	None	X	X
Nassau [1]	10%	X	X
all others [56]	7%	X	X
<i>Cities</i> [62] ²			
New York City [1] ³	10%	X	X
over 125,000 pop. [5] ⁴	9%	X	X
all others [56]	7%	X	X
<i>Towns</i> [932] ²	7%	X	X
<i>Villages</i> [554] ⁵	7%	X	X
<i>School Districts</i>			
<i>City School Districts</i>			
over 125,000 pop.	[included in the city debt limit]		
other	5% ⁸	X	X
<i>Other School Districts</i>			
in cities [10]	5% ⁸	X	—
assessed value of + \$100,000	10% ⁷	—	X ⁹
[884]			
assessed value of — \$100,000	[no limit if the voters approve]		
[40]			
<i>Fire Districts</i> [791]	3% ⁸	—	X

* Except as otherwise noted, the per cent limit is based on the full valuation of real property on an average of the most recent five years. This limit applies to bonds, bond anticipation notes and capital notes.

1. The statute involved is the Local Finance Law.

2. Exempted indebtedness includes all debt for water supply and distribution, debt for revenue producing improvements or services and sewer debt issued from January, 1962 to December 31, 1972, where authorized by the State Comptroller.

3. Additional exemptions have been authorized both in the Constitution and the Local Finance Law for New York City with respect to certain indebtedness for schools, hospitals, rapid transportation and housing.

4. These cities [excluding New York City which is governed by a 10% limit] are: Albany, Buffalo, Rochester, Syracuse and Yonkers.

5. Exempted indebtedness includes sewer debt issued from January 1, 1962 to December 31, 1966 where authorized by the State Comptroller.

6. Limitations on bonds for all school purposes may be exceeded if approved by: (1) 60% of qualified voters, (2) the New York State Board of Regents, (3) the New York State Comptroller.

7. Limitations on bonds for all school purposes may be exceeded if approved by (1) 60% of qualified voters, (2) the New York State Board of Regents.

8. Limitations may be exceeded if approved by: (1) % of qualified voters, (2) the New York State Comptroller. However, the total indebtedness may not exceed 5% of the full valuation of the most recent year.

9. Per cent limit is based on real property full valuation on a one year base.

voters of the state, the voters also approved of an addition to the exemption afforded New York City on account of the debts that accumulated as a result of the acquisition of the transit system.³¹ In terms of New York City, additional exemptions have been made necessary because of the fact that the city operates so close to its debt limit. The voters of the entire state were asked in 1949 to approve an additional exempted \$500,000,000 for subway construction and replacement of rolling stock.³² Voter approval was also given in 1951 to a \$150,000,000 bond exemption for hospitals, and in 1959 to a \$500,000,000 school construction exemption.³³ It should be noted that when many of these exemptions were allowed, New York City not only faced a pressing debt limit, but was also taxing to the maximum allowable under the constitutional real estate taxes and other statutory authorizations for alternative taxation. An attempt to ease New York City's financial dilemma by allowing taxes and bond limits to be computed on the basis of full valuation rather than assessed valuation proved of little assistance to the city.³⁴ This was done by means of a 1951 amendment. Of this the Temporary Commission staff report states: "New York City, although it was pressing heavily against its debt limit, gained the least because its assessed valuations were much closer to full value than those of other jurisdictions . . ." ³⁵ Thus, in little or no time at all New York City was pressed to the wall with its debt limit virtually exhausted.

II. ARTICLE VIII IN OPERATION

A. *Outline of Provisions*

The article itself, although made up of fifteen sections, thirteen of them regulating municipal debt and the others regulating the taxation of real estate, sets forth nine principles regarding municipal credit.

1. Prohibition of Gift or Loan of Money or Credit

This was an outgrowth of the era of municipal debt defaults which occurred in the 1870's when municipal credit was used to aid railroad

31. *Ibid.*

32. *Ibid.* The tragic financial straits of the New York City Transit System are demonstrated by the fact that these funds, which the voters thought would pay for the Second Avenue subway, actually went to the refurbishing of the existing system.

33. *Ibid.*

34. At times the legislature has extended permission to levy taxes in areas that New York City has chosen not to tax. An example is the current statutory authorization permitting a payroll tax which the city fathers resisted imposing. N.Y. Sess. Laws 1953, ch. 202 § 25-b. Thus, at times the city objects not because of the lack of authority but because of limited alternatives open within existing authority. The issues are then more complex and concern fiscal self-determination.

35. Staff Report No. 35, at 10.

expansions and land speculations. Thus, the general proposition is established prohibiting local governments from lending their funds or credit to any individuals, private corporations, or private associations. This is set forth in section 1 of article VIII with several exceptions.³⁶

2. Contraction of Debt is Restricted to Local Purposes

This provision, found in section 2, operated harshly prior to a 1959 amendment to the constitution. As originally written, the constitution restricted local borrowing not only to public purposes but also solely for the purposes of the local government itself. The amendment to section 1 of article VIII provides, "except that two or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately." This goes a good way toward substituting government purpose for local purpose, and lifts many impediments to inter-governmental cooperation.

3. Local Governments May Borrow for Common or Cooperative Purposes

This is, in a sense, a corollary to the second principle and is no doubt a substantial change from the intention of the framers. Section 2-a is an additional manifestation of trends toward functional integration of local governments. It is, however, a far cry from that which has been advocated by students of metropolitan area problems. Professor Paul Studenski says:

The states and the federal government should, as a part of definite policy, provide appropriate encouragement to efforts to set up real metropolitan governments either of the federated type or based on the metropolitan county. This would be the greatest contribution they could make to the advancement of local government in this country, first of all because the federated and the county-based types of metropolitan government are the most effective forms of local government ever conceived for the care of metropolitan needs in the modern urban democratic civilization, and secondly because their effectuation needs some such lift from above to offset the resistance that comes from the parochial point of view entertained by some local governments.³⁷

In New York, however, the professor's suggestion runs afoul of another principle in article VIII, restriction of the creation of overlapping governments.

36. The exceptions include: aid or funds to needy or correctional institutions; child care in foster homes; health and welfare services for children; increased pensions for certain firemen, policemen and street cleaners; county borrowing of money to aid school districts; joint undertakings of several government units; water, sewage and drainage; and public housing corporations. These exceptions are found in scattered sections of N.Y. Const. art. VIII.

37. Studenski, *Metropolitan Areas* 1960, 49 *Nat'l Civic Rev.* 467, 473 (1960).

4. A Pledge of Full Faith and Credit Is Required

Section 2 of article VIII provides: "No indebtedness shall be contracted by any county, city, town, village or school district unless such county, city, town, village or school district shall have pledged its faith and credit for the payment of the principal thereof and the interest thereon." The effect of this provision is to prevent the legislature from authorizing, or the local government from contracting, limited obligation types of debt, such as those limited obligation special assessment bonds, or revenue bonds. Although based on the quite reasonable axiom that a community must stand back of all the debt that it incurs, the inability to use anticipated revenues as credit for repayment makes the rule severe and often subject to criticism. As a result of the constitutional amendment which removed self-liquidating debts from the debt limit, taking anticipated earnings into account, a large part of the onus that was so long attached to that part of section 1 has been removed.

5. The Debt Must Be Financed Within the Useful Life of the Object Financed

Section 2 provides: "No indebtedness shall be contracted for longer than the period of probable usefulness of the object or purpose for which such indebtedness is to be contracted, to be determined by or pursuant to general or special laws, which determination shall be conclusive, and in no event for longer than forty years."³⁸ The details of financing terms are left to legislation, subject to this broad constitutional mandate which it is almost universally felt lends itself to good finance.

6. Debt Procedures Must Conform to Constitutional Requirements

While perhaps best dealt with by statutes, or even administrative regulations, certain constitutional requirements have been laid down for the issuance of bonds. Section 2 contains regulations for the issuance of bonds such as:

all such indebtedness [all save indebtedness in anticipation of collection of taxes] and each portion thereof from time to time contracted, including any refunding thereof, shall be paid in annual installments, the first of which, except in the case of refunding of indebtedness heretofore contracted, shall be paid not more than two years after such indebtedness or portion thereof shall have been contracted, and no installment, except in the case of refunding of indebtedness heretofore contracted, shall be more than fifty per centum in excess of the smallest prior installment.

38. New York water supply, rapid transit and dock construction bonds may be extended for up to fifty years. N.Y. Const. art. VIII, § 2.

This provision will insure payment according to a schedule of annual payments, and operates as another restraint upon local modification. These rules also operate to prevent the establishment of long term bonds instead of the mandated sinking fund bonds.

7. Investors Are Assured of Payment of Principal and Interest

Section 2 provides:

If at any time the respective appropriating authorities shall fail to make such appropriations, a sufficient sum shall be set apart from the first revenues thereafter received and shall be applied to such purposes. The fiscal officer of any county, city, town, village or school district may be required to set apart and apply such revenues as aforesaid at the suit of any holder of obligations issued for any such indebtedness.

Thus, if a local government should fail to appropriate moneys owed on a bonded indebtedness to a security holder, that security holder has constitutionally protected recourse against the financial officer of the local government. In addition, debts incurred in the service of debts already incurred, and taxes raised to support such indebtedness are exempt from the taxation and debt limits of local government.

8. A Qualified Ceiling Is Placed on the Occurrence of Debt

The formula listed previously, which enumerates the percentages of full value of realty used as the debt limit, does not give the complete picture of the way in which the debt limits apply to individual citizens.³⁹ For example, New York City has a permissible debt limit equivalent to ten per cent of the full taxable real estate value in the city. This ten per cent must cover the complete debt, save for numerous non-formula exceptions and special kinds of debt, of the city for all of its purposes. But, a resident of Nassau County could see his local governments realize a debt load of 37%. This would include 10% for the county, 7% for a town and 7% for a village in the county, and 10% for the village school district as well as 3% for the fire district.

New York City is also disadvantaged when compared with other cities in the state. The ten per cent limit compares unfavorably with the sixteen per cent limit available to Buffalo, Albany, Rochester, Syracuse and Yonkers,⁴⁰ and the nineteen per cent available to the other fifty-six cities of the state.⁴¹

39. The qualified ceiling is presently found in N.Y. Const. art. VIII, §§ 4, 5, 6, 7, 7-a, 8, 9 and in portions of N.Y. Const. art. VIII, §§ 1, 2, 2-a, 3, 11-a, 12.

40. The figure of 16% is the sum of 9% for city and school costs and 7% for county expenses. N.Y. Const. art. VIII, § 4.

41. The figure of 19% is the sum of 7% for city expenses, 7% for county expenses and 5% for school district expenses. *Ibid.*

In addition to this mathematically computed inequity, there are other shortcomings of the rate system as used, for certain debts are excluded from the debt limitations, sometimes by bookkeeping procedures and sometimes by constitutional exemption from the debt limit. In addition, it is a ceiling that is not related to the actual ability of the cities to contract debt. Real estate values increasingly reflect less and less the ability of localities to raise total revenues. More will be said about how the system actually works in this regard. As a general proposition, it is quite clear that the capacity to meet debts cannot be gauged by the debt limit as found in the New York State Constitution. A Temporary Commission staff report has indicated:

it is clear why well informed, experienced investors place less dependence on constitutional debt limits than on other factors in appraising the quality of municipal debt obligations. Their chief interest in constitutional debt limits . . . is more likely to center in concern over highly restrictive limits that prevent sufficient borrowing to maintain an adequate physical plant or induce resort to evasive and costly borrowing methods.⁴²

On the question of the debt limit and its application to New York City, the staff report indicates that "the constitutional debt limit as it applies to this city is a regulatory contrivance that has been so distorted by amendment . . . as to deprive it of much resemblance to any well-rounded principle of control."⁴³

9. Restricting the Creation of Overlapping Governments

As has been noted above, local governments have been allowed to borrow jointly, yet the provisions of section 3 prevent the creation of metropolitan districts which would be able to provide area-wide services. Despite the prohibition of metropolitan districts and overlapping special districts with powers to borrow and tax,⁴⁴ administrative cooperation is not prohibited. Needless to say, it is hardly encouraged. In addition, the constitution permits the setting up of improvement districts within counties or towns. The intent of the prohibition against overlapping is to limit joint operations within present debt limits.⁴⁵

42. Staff Report No. 35, at 35.

43. Id. at 34.

44. See N.Y. Const. art. VIII, § 3.

45. These nine principles of debt limitation are complemented by § 10 of article VIII, which sets forth the constitutional limits on real estate taxation which were previously noted in detail. This flat per cent limit based on real property full valuation is qualified by section 10-a, which provides that in cases of revenues received from improvements, the revenues have to pay for repairs and maintenance before interest and amortization, and by section 11 which excludes New York City's now defunct "pay as you go" system. In addition, section 11 states that taxes raised for certain capital expenditures repaid in two years are to be excluded from tax limitations. This was intended to encourage tax funds rather than bonds

The question of real estate limits has been resolved in state constitutions in only one-quarter of the states, and the staff studying the constitution for the Temporary Commission said that "this situation does not lend itself well to constitutional regulation"⁴⁶ and as to New York City, "the general effect is that in New York City the property owners have the highest protection and the city the lowest taxing power, under the 2½ per cent rate limit . . ."⁴⁷

B. *The Special Problem of New York City*

"New York City has had an acute problem of financing essential services in spite of its great wealth. This is primarily due to the limitations on the kind of taxes it may levy and to the constitutional tax and debt limits."⁴⁸

The most obvious result of the restriction on the power of local governments to raise funds is in the form of increased aid from outside sources of revenue. The most readily available is the state itself, and it has provided a great deal of assistance to local governments. But the formula for distribution of aid, which takes on three forms (sharing of taxes; grants for special functions; and general unearmarked funds), has resulted in a disproportionately lesser share for certain municipalities in the state, notably New York City.⁴⁹

Thus, New York City, which provides almost half of the receipts for the state, receives less than 40% of what the state turned back to local governments. State aid amounted to 31.4% of the revenue collected by out-of-New York City localities, but only 19.3% of the revenue for New York City. New York City has also been woefully treated in grants given for various functions. The education formula results in tremendous discrimination since the basis of state aid to education is:

that the State and the school districts should finance jointly a "foundation program" which provides a "minimum educational opportunity" in every school district, and that

to be used for capital improvement, but has been largely unsuccessful in that attempt. Section 11(b) applies to all cities except New York, and all counties, villages and school districts and excludes tax limitations for taxes on direct appropriations for capital projects. This eliminates the "phantom debt" for all municipalities except New York City, and taxes levied for what would be covered by debt issues are not restricted by limits.

46. Staff Report No. 35, at 40.

47. *Ibid.*

48. Staff Report No. 11, at 55.

49. In 1964, New York City accounted for \$3,119,397,737 out of total receipts from municipalities of \$6,256,433,989. But New York City received only \$601,163,961 out of a total of \$1,598,901,477 of state aid to municipalities. N.Y. State Comptroller, Special Report on Municipal Affairs 258 (1965) [hereinafter cited as Special Report on Municipal Affairs].

the local share should take into account the ability of the local district to contribute, ability being measured by the full value of taxable real estate in the district.⁵⁰

This hurts New York City since the value of New York City's real estate is the highest in the state, and, moreover, it is no indication of the city's ability to finance its operations, given the continual financial dilemma of New York City in spite of its valued realty. In point of fact, New York City's real estate tax continues to pay a dwindling share of the cost of running the city.⁵¹

The city is also discriminated against in the allocation of funds for highway maintenance and construction. Ten per cent of the state taxes paid on motor fuel are returned to all counties except those in New York City, to pay for town and county highways. Twenty-five per cent of motor vehicle registration fees are returned proportionately to the counties, and New York City does participate in this. Yet the fact remains,

50. Staff Report No. 11, at 18.

51. In 1942, the real property tax furnished 62.2% of the city's income. By 1950 that figure was 44.6%, and in 1958 it was 42.8%. In 1964, it amounted to 40.1%. Figures for the 1942-1958 period are taken from N.Y. State Comm'n on Governmental Operations of the City of New York, *New York City in Transition 77* (Interim Report, Feb. 1, 1960) [hereinafter cited as *City in Transition*]. The figures for the period since then come from Special Report on Municipal Affairs. From the period 1955-1964, the revenues from all sources for New York City increased 81.37%, but the revenue from the real estate tax only increased 43.64%. Thus, real estate values provide a poor gauge from which to judge ability to pay. For cities other than New York, revenues have increased 60.5%, with real estate taxes increasing 62.35% during the same period. As for school districts (excluding New York City), revenue has increased 174.6%, with a 157.3% increase in the property tax. Special Report on Municipal Affairs 10-13. New York City receives 32.4% of monies disbursed by the state for schools. *Ibid.*

This is how New York City compared, according to the N.Y. State Dep't. of Audit and Control, *Financial Data for School Districts for the Year Ending June 30, 1964*, at xvi-xvii (1965), with the rest of the state:

	NEW YORK CITY			
	1955	1960	1964	change
Number of Students	914,450	977,531	1,046,523	+14.4%
State Aid*	100,738	163,019	261,500	+159.6%
Total Cost*	442,147	633,029	933,183	+111.1%
	ALL OTHER SCHOOL DISTRICTS			
	1955	1960	1964	change
Number of Students	1,333,587	1,720,145	2,003,576	+50.2%
State Aid*	241,216	470,663	755,958	+213.4%
Total Cost*	747,858	1,288,011	1,785,746	+138.8%

*Thousands of dollars

the city gets no participation in fuel taxes for the maintenance of its roads, and so the bulk of state highway grants are outside of the city limits while some of the heaviest traffic occurs within its limits.

The city benefits almost equally with the other municipalities of the state in the distribution of welfare assistance, although the welfare budget of the city has risen 104% for New York City over the 1955-1964 period, but only 49.97% in other cities of the state. In the area of mental health services, equalization has not been a rallying cry since the city receives a larger share of state funds. In this area, the pleas have been for expansion into new and larger areas of spending. Thus, in some city functions New York City actually does better than other municipalities of the state.

With restrictions upon the local government power to raise money has come ever increasing state aid. Various committees have constantly sought an improvement in the distribution of this aid for New York City, but to no real avail. Thus, for example, the Haig and Shoup report argued for the full cost of the city colleges to be borne by the state and the Board of Education report pleaded for increased state aid per student.⁵² The New York State-New York City Fiscal Relations Committee argued for aid to the city highways. But the problem remains as a continuing and growing one, a symptom of larger problems, the inability of local governments to raise money for needed services. The Temporary Commission staff report says "the problem of assistance to urban areas, and particularly New York City, has not yet been fully met. It may take the form of grants of wider powers of self financing, however, rather than increased distributions of money."⁵³

Yet the blame for the inability of New York City to function under debt and tax rate limits cannot be placed solely at the feet of Albany. The Commission on Governmental Operations declared, in its 1960 interim report, that "the existing government of the City of New York, taken as a whole, does not manifest the appetite, willingness, or capacity to initiate or carry out the major substantial changes in governmental machinery and operations which are required."⁵⁴

In addition, the Commission found the problem resting largely with the city itself and curable by the city, rather than through constitutional change. It said, "by borrowing for purposes for which no big city should borrow, and for some purposes for which no city, big or small, should borrow, New York City has constructed a monumental debt load and

52. Haig & Shoup, *The Financial Problem of the City of New York: A Report to the Mayor's Committee on Management Survey 364* (1952); New York City Board of Education, *Report of the Fact Finding Committee on State Aid to Education* (1954).

53. Staff Report No. 11, at 59.

54. City in Transition 5.

frittered away its legal borrowing power without financing all of its basic capital requirements.”⁵⁵ The Commission added, that it “finds that what the City really needs is not necessarily more legal borrowing power, but good judgment and resourceful planning in using the power that it has.”⁵⁶

The city’s poor financial situation has been studied particularly since the 1950’s, almost always with a view toward improvement of structure and management.⁵⁷ The reports produced by these studies spoke, for the most part, of New York City’s tremendous problems of financial management, citing in many instances misuse of borrowing powers, or operations that could be better managed. Said one, “the City’s use of large amounts of temporary borrowing to finance operations arises primarily because the receipt of revenue is not timed to coincide with cash demands for expenditures.”⁵⁸ In addition, it has been found by the Commission on Governmental Operations, which was more critical of municipal shortcomings rather than state contribution to the city’s fiscal dilemma, that “it is disconcertingly clear that the City has a huge accumulation of unsatisfied capital requirements for its school, sanitation, rapid transit, urban renewal, and other major programs; that this backlog is being added to relentlessly by the depreciation and obsolescence of existing facilities; and that changing conditions keep generating new requirements.”⁵⁹ It was a further feeling that New York City was already too heavily in bonded debt, possessing in 1957 five per cent of the nation’s total population, but at the same time responsible for over thirteen per cent of the national local debt.

On dealing with the question, does New York City need an expanded debt limit, the Commission verdict was a qualified no. It found that New York City’s legal limit closely approximated its economically feasible limit, and that the ten per cent ceiling, given the host of exemptions already afforded the city, placed its economic solvency in grave danger.

C. *The Tax Limits in Operation*

As has been observed, tax and debt limits can have a very obvious effect on the workings of local government. But this need not be the case in every instance. Table 3 shows that the constitutional tax limits are

55. Id. at 6.

56. Ibid.

57. These committees have included The Mayor’s Committee on Management Survey of the City of New York, 1950-1953; The Temporary State Commission to Study the Organizational Structure of the Government of the City of New York, 1953-1954; The New York State-New York City Fiscal Relations Committee, 1955-1956; and The Commission on Governmental Operations of the City of New York, 1959.

58. City in Transition 21.

59. Id. at 36.

TABLE 3
 EXTENT TO WHICH COUNTIES, CITIES OTHER THAN NEW YORK, AND VILLAGES USED
 THEIR CONSTITUTIONAL POWERS TO TAX REAL PROPERTY IN 1965*

<i>Percent of Taxing Power Used</i>	<i>Counties [57]**</i>	<i>Cities [61]**</i>	<i>Villages [533]</i>
12.50 or less	—	—	5.1
12.51—25.00	8.8	3.3	20.2
25.01—37.50	50.9	9.8	30.3
37.51—50.00	38.6	9.8	26.3
50.01—62.50	1.7	27.9	12.6
62.51—75.00	—	18.0	4.9
75.01—87.50	—	16.4	.2
87.51 or more	—	14.8	.4
	100.0	100.0	100.0

* Figures were supplied by the New York State Department of Audit and Control, April, 1966.

A municipality is using 100% of its taxing power when it imposes a real property tax equivalent to 2.00% of its average full value—2.50% for New York City—to finance its operations. In the table, therefore, the use of 25% of taxing power indicates an operating levy of one-half of 1% of the average full valuation.

** New York City is excluded.

of little concern to county governments, with less than two per cent of them, four counties in all, taxing more than half of what they are authorized to. In addition, villages do not find themselves constricted as barely five per cent of them use more than $\frac{5}{8}$ of their authorization.

What the table also shows is that fifteen per cent of the cities are taxing more than $\frac{7}{8}$ of their allowable limit. What the table does not show is that those cities most directly affected include the six largest in the state.⁶⁰ Thus, tax rate limits on real property, although scheduled to affect all units of government similarly, only really affect the larger cities of the state and shield only the property owners in those cities.

It may of course be that local government municipalities not functionally limited by constitutional tax limits on real property merely ask their real property taxpayers to bear less of the costs of government. Were this the case, then it could be said that a choice has been made to spare land holders of the share of government cost at the price of finding new sources of revenue, and that the cities involved are asking for greater shares in the costs of government. But that is not the case. Realty taxes continue to

60. In 1965, Rochester (3rd largest city in the state), taxed 99.9% of its limit; Yonkers (5th), 99.9%; New York City (1st), 99.869%; Syracuse (4th), 99.2%; Buffalo (2nd) 95.5%; Albany (6th) 91.5%. Other cities which felt the impact of the constitutional tax limit were New Rochelle (10th) 89.5%; Mount Vernon (11th) 93.0%; Newburgh (22nd) 99.5%; and Salamanca (60th) 95.0%.

be the broad base of taxation for all local governments and in many of them such taxes are still able to bear the major portion of local government costs.⁶¹

While the proportion of realty income to total income remained fairly constant for the cities, realty taxes bringing in 62% more in a period in which total revenues climbed 61%, New York City suffered from the ceiling on realty taxes. Excluding the costs of education, for which funds from city money must come from realty taxes, 38% of revenue was raised from realty taxes in 1955, while only 31% was raised similarly in 1964. Thus, while the cost of New York City government, again exclusive of education, rose 81.37% in a ten year period, income from realty taxes rose barely half of that, 43.6%.

In addition, 1964 marked the first year that non-property taxes, exclusive of assessments and aid, exceeded property taxes as a source of income for the city. Needless to say, with property values rising 41% over a ten year period in New York City, and at the same rate in the state, realty, long a broad based tax for local governments, will be less and less able to meet its share of the costs of government. This is especially true if the property owner remains constitutionally protected from taxation increases.

The problem of raising the limit on taxation has been a recurrent one. As has been indicated, there was a shift in 1949 from assessed to full valuation as the tax limit designed to benefit New York City; but its impact was not substantial. "The shift to a full value tax limit base gave the City only some four per cent gain in taxing power under the old equalization rates and only 11 per cent gain under the new [1954-1955]

. . . .⁶²

Also of little help was the 1953 amendment which raised the tax rate for New York City from 2% to 2½%. The pilgrimages to Albany by New York City mayors which began in the post World War II days accelerated in the 1950's and continue today. Needless to say, realty tax limits are not all that plague New York City. Mayor Lindsay's current tax proposals, and the background for them, indicate the tremendous financial distress under which New York City suffers. The limit on taxa-

61. In 1955, all county governments, exclusive of New York City counties, received revenue of \$360,331,000, and of this, \$168,160,000 or 47% was paid in realty taxes. In 1964, all county governments, not including New York City counties, received revenue of \$741,960,000, of which, \$311,136,000 or 42% was from realty taxes. Thus, while total revenues increased 105.9%, real estate income rose 85%. Special Report on Municipal Affairs 5.

62. Staff Report No. 31, at 91.

tion of realty is only one of many limitations. As to the tax limits and their liberalization over the years, New York City took immediate and full advantage of every gain made. The result, taxation at the constitutional maximum and the lack of margin, makes for unsound budgeting. As the Temporary Commission staff report puts it:

The City's tax limit . . . has continued to restrict the City's financial operations forcing it to continue to finance all of its capital improvements by borrowing and thus to accumulate a large debt requiring inordinately large appropriations for debt service. Of its tax rate of 4.17 per cent in 1958-59, 1.54 per cent, or nearly 40 per cent of the total—an unusually high proportion—was for debt service. The tax limit also forced the City to resort to various makeshifts in its financings and to impose some uneconomic non-property tax levies. The liberalized tax limits developed in 1949-53 were just as arbitrary as the previous lower tax limits. No adequate reason has ever been given for fixing the City's tax limit far below the combined city-county-school district limits of the other cities in the State, which range between 4 and 6 per cent of full value.⁶³

Another makeshift attempt to alleviate New York City's problems was made with a proposed amendment to the constitution which passed through both houses of the legislature in 1965 and would have raised the maximum real estate limit to 3% of the 3 year average of full valuation. The proposal, however, failed to receive the approval of the 1966 legislature.

D. *The Debt Limits in Operation*

There are certain problems that New York City faces under its debt limit that have been suggested, by even the most severe critics of the city, as areas in need of reform.

What will tend to handicap development of an adequate program [of debt management], however, will be continuance in the State constitution of the provision (Section VIII, Article 11) [sic, article VIII, section 11] that creates 'phantom debt,' i.e., a continuing charge of the cost of a project against the debt limit after it has been paid for.

Among the local governments of the State, only New York City, when it finances all or part of a capital improvement by cash or short-term notes outside of the constitutional tax rate limit for operating purposes, is required to charge the cost of the project against the debt limit as though bonds had been issued for the full period of usefulness of the project. This is a device that restricts intelligent financial planning and discourages thrifty efforts to save bond interest. The Commission favors its repeal.⁶⁴

The constitutional tax rate limit, set at 2.50% for New York City is not, as has been indicated, the total tax rate limit. Added to this 2.50%,

63. Id. at 103.

64. City in Transition 40.

which is more properly called "Constitutional Tax Limitation for Operating Purposes," is a tax power exempt from limit to cover appropriations for principal and interest on bonds and on capital notes for capital purposes and direct budgetary appropriations for an object or purpose for which a period of probable usefulness has been determined by law. For New York City, this amounted to \$426,921,566 in 1964. Thus, when New York City spent money for improvement out of this fund, it had to write off the amount of expenditures, which were free from the tax limit, against the debt limit. It makes little sense to fund by cash, if such expenditures, exempt from tax limits, are still subject to debt limit, regardless of whether the city actually incurs debt for them. It should be noted that this provision applies only to New York City. This is the result of a constitutional amendment which removed the phantom debt problem for every other local government unit of the state.

New York City's debt limit has been additionally strained by a shifting of many operating expenses to the capital lines. In the period 1956-1960, for example, the city diverted over \$100,000,000 of its borrowing capacity to finance judgments, claims, pension payments and street repavement.

By December 31, 1964, New York City's Gross Debt was \$4,846,760,000, with a net debt of \$4,057,584,000 and the total debt subject to constitutional debt limit of \$2,291,703,375, with a total permissible constitutional debt limit of \$3,578,291,528. The margin of \$1,286 million in 1964 is better than the 1959 margin of \$606 million, yet it is not actually as formidable as might appear when one adds the increased assumption of more than \$200 million of debt, in the last days of the Wagner Administration, for what was generously described as capital improvements. As far as other localities of the state are concerned, they do not appear to suffer as great a hardship as a result of the debt limitation as does New York City.⁶⁵

The debt limit operates on an unwarranted assumption—that debt limit should be related to real property value as a proper indicia of municipal capacity to meet debt obligation. In addition, the numerous exemptions distort any real relation between capacity and power to incur debt. These exemptions range from exemptions from sinking funds, water debts, debts of revenue producing undertakings to other varied constitutional exemptions especially for New York City. In effect, they afford little meaningful regulation of municipal finance.

65. Galloway, Proposed Tax and Debt Limit Amendments, 1948 Municipal Problems (Annual Meeting of the Conference of Mayors and Other Municipal Officials of the State of New York) 16.

III. RECOMMENDATIONS FOR CHANGE

A. *Recommendations of Official Bodies*

Many suggestions for reform had been made prior to the 1938 Constitutional Convention. Since then, and largely as preparation for the never held 1957 Convention, many more recommendations have been made. The Bутtenweiser-Blanford Committee⁶⁶ suggested that a state constitutional restriction placing a limit on the debt of the city to a percentage of the true value of real estate was no longer appropriate. Its reasoning was that other sources of revenue had been available to the city to provide creditors with sufficient guarantees and to give support on which to base the accrual of additional obligations. It recommended that the state should search for substitute methods of limiting the city debt. Needless to say, no action has been taken on that proposal.

The 1960 Commission on Governmental Operations felt on the other hand that the burden of reform fell squarely on New York City's shoulders. The present debt limit, with the removal of the phantom debt, it felt was sound.

The staff of the Temporary Commission for the Simplification and Revision of the State Constitution felt reform was necessary in areas of taxation and debt. In both areas, it felt the responsibilities should be vested in the hands of the state legislature. Its model for a tax section was as follows:

The legislature . . . may place such limitations as are deemed desirable on the power of local governments to levy taxes on real estate for local purposes, subject only to the restriction that no limitation shall be imposed on the power to levy such taxes for payment of the interest on and principal of all indebtedness.⁶⁷

With regard to the debt, it felt:

Some students of local government and finance advocate abandonment of constitutional regulation of local borrowing and transfer to the legislature of full responsibility under ordinary legislative processes, a procedure that has operated quite successfully in some states, less successfully in others. So far as is known, there is no material support for so sweeping a change in the State of New York.⁶⁸

Its model, therefore, involved a special legislative procedure that was outlined as follows:

[1] make it the duty of the legislature to regulate the powers of local governments

66. The New York State-New York City Fiscal Relations Committee, 1955-1956.

67. Staff Report No. 35, at 41.

68. *Id.* at 14-15.

with respect to taxation, assessment, borrowing money, contracting debts and the loaning of credit, so as to prevent abuses and promote fiscal responsibility.

[2] . . . the legislature shall enact and may amend a basic statute of local finance, both procedures requiring agreement by a majority of the members elected to each of the two houses and approved by the governor in each of two successive calendar years.⁶⁹

The effect of these controversial proposals would not only be to vest more power in the hands of the legislature, but to make legislative action more difficult and deliberative. But, it was the staff's conclusion that, "the continued maintenance of these limitations in the New York Constitution appears out of tune with the progressive nature of New York's state government and local governments."⁷⁰

The Temporary Commission did not approve of the conclusions reached in its staff reports. The Commission took the view that, "the people of the State have a deep interest in the fiscal operations of local governments, particularly in the way in which municipal credit is handled and the power to tax is exercised."⁷¹ If the Commission meant by this that the people do not like being taxed, then one would have to agree with its statement. But to suggest that "the people have a deep interest in fiscal operations" is somewhat of an exaggeration, particularly in view of a local finance article that defies comprehension even by an expert.

While the staff of the Commission did an excellent job in organizing material on local debt and tax limits, and then proposing sound improvements in the system, the Commission gave its viewpoint little support. In fact, the Commission embraced the same old myths and superstitions against which its staff had warned.⁷²

The thesis of the Commission was that it was "convinced that New York State has been fortunate in having the basic principles for control of public borrowing firmly rooted in the Constitution [and that] . . . the State of New York is not now ready to remove debt and tax limits from the Constitution."⁷³ Aside from a few changes, best described as stylistic, the Commission suggested little. It opted for a continuation of the per-

69. *Id.* at 15.

70. Staff Report No. 31, at 111f.

71. Temporary Commission on the Revision and Simplification of the Constitution, *Simplifying a Complex Constitution*, N.Y. Leg. Doc. No. 58, p. 21 (1961).

72. The staff reports, some 35 studies in all, are critical and constructive evaluations of the entire constitution on a topic-by-topic basis, but they are only available in limited mimeographed form. The report of the Commission, which was less informative, was distributed throughout the state as a legislative document.

73. Temporary Commission on the Revision and Simplification of the Constitution, *Simplifying a Complex Constitution*, N.Y. Leg. Doc. No. 58, p. 20 (1961).

centage debt limit at about the same levels and with the same exclusions as currently found in the Constitution. As for tax limitations, it suggested continuations at the same rates with the real estate base retained.

B. *Recommendations of Interest Groups*

The Commission view was contrary to the views of many interested citizens who testified before it in public hearings.⁷⁴ New York State Comptroller Arthur Levitt, who was also Governor Harriman's Chairman of the Local Government Committee, issued a statement to the Commission that was most appropriate to local finance. He declared that the structure of local government was warped in recent decades because of the expansion of metropolitan populations and the creation of new demands for government services at the local level. He cited among New York State problems: (1) the multiplicity of local government units, over 7,000 in 1957;⁷⁵ (2) the lack of adequate powers of inter-local cooperation; (3) overlapping functions of local governments; (4) lack of home rule powers for towns and villages other than first class villages;⁷⁶ (5) lack of optional forms of metropolitan government; (6) need for a clear definition of home rule powers; and (7) the general need for constitutional revision.⁷⁷ Speaking of home rule in general, Levitt said: "Despite the great increase in the complexity of modern municipal life, constitutional devices for local self-government, weak as they are, have been further constricted by judicial interpreta-

74. Some of the more interesting suggestions for reform were made in hearings on June 4, 1957 in Buffalo, on June 5, 1957 in Albany and on June 14-15, 1957 in New York City. Other suggestions are found in published form in various volumes of *Municipal Problems*. E.g., McGovern, *Developments in Local Government in New York State*, 1954 *Municipal Problems* 35; McGovern, *Developments in Municipal Finance*, 1952 *Municipal Problems* 21; McGovern, *City and Village Debt and Tax Limits*, 1951 *Municipal Problems* 13; Moore, *Debt and Tax Limits*, 1950 *Municipal Problems* 30; Mott, *Modern and Effective Home Rule*, 1949 *Municipal Problems* 118; Moore, *State-Local Fiscal Relations*, 1947 *Municipal Problems* 51; Galloway, *Financial and Legal Difficulties of Our Municipalities*, 1947 *Municipal Problems* 37; Bird, *Municipal Debt Policy for Post-War Period*, 1945 *Municipal Problems* 20; Moore, *Constitutional Tax Limit*, 1944 *Municipal Problems* 38; Moore, *Fiscal Problems of Cities and Villages*, 1943 *Municipal Problems* 36; Eldred, *Education Budgets and the New Constitutional Tax Limits*, 1941 *Municipal Problems* 85; H. Jones, *Tax Limitation Boomerang*, 1938 *Municipal Problems* 109; Moore, *Constitutional Taxing and Borrowing Restrictions*, 1938 *Municipal Problems* 33.

75. By 1965, this figure had risen to 8,669, excluding consolidated health districts, public authorities and urban renewal agencies.

76. This was altered by the 1964 home rule amendment. See N.Y. Const. art. ix, §§ 1-3.

77. Hearings Before the New York State Temporary Commission on the Constitutional Convention, Albany, New York, June 5, 1957, at 26-28 [hereinafter cited as *Hearings at Albany*].

tion.”⁷⁸ He added, “in practice, the home rule provisions of our Constitution, intended to aid the localities, have actually harassed them.”⁷⁹

His solution to fiscal problems was therefore tied directly to home rule. He said:

The fiscal aspects of local government are inseparable from the home rule problem. Nevertheless, as construed by judicial decision, neither local taxation nor local indebtedness comes within the purview of constitutional home rule protection. Some measure of municipal immunity from interference with essential fiscal powers, within limits set in the Constitution, should be provided in the Constitution itself.⁸⁰

The Comptroller did not, however, favor localities setting their own limits.⁸¹ Judge David Diamond, also on the Governor’s Committee, agreed with Comptroller Levitt, declaring, “the power of the Legislature which is laid down in Article VIII as to finance, both indebtedness and taxation, it seems to me is a derogation of the power of Home Rule which we shouldn’t have. . . . [Sections 4, 10 and 12 of] Article VIII say that while these maximum limitations are laid down by the constitution, the Legislature may reduce them. . . . [I]t seems to me that in principle that is wrong.”⁸²

The strongest case for home rule and fiscal independence was made by Victor F. Condello, representing Mayor Robert F. Wagner, Jr., of New York City. Mr. Condello said, “the people of the city have fought for and won constitutional home rule provisions which, over the years, have been so whittled away that practically nothing remains of them but the neglected and ignored printed words.”⁸³

He continued:

The fiscal affairs, for which the city government is responsible, are not controlled at City Hall, but are dictated in Albany . . .⁸⁴

Some of the city’s principal properties—for example its sprawling water supply system upon which it has expended billions of dollars—have been held to be under the Legislature’s jurisdiction. The same is true of rapid transit. The city over the years has expended in the building of its rapid transit system upwards of two billion dollars. The

78. *Id.* at 28.

79. *Id.* at 29.

80. *Ibid.*

81. Responding to a question put by Assembly Speaker Joseph Carlino, which was as follows: “Do you feel that the constitutional debt and tax limitation should be eliminated from the Constitution and placed in the hands of the Legislature?” Levitt answered, “I am not prepared to say that at the moment . . .” *Id.* at 32.

82. Hearings Before the New York State Commission on the Constitutional Convention, Buffalo, New York, June 4, 1957, at 80 [hereinafter cited as *Hearings at Buffalo*].

83. Hearings Before the New York State Temporary Commission on the Constitutional Convention, New York, New York, June 14, 1957, at 3 [hereinafter cited as *Hearings at New York*].

84. *Ibid.*

language of the constitution is quite plain that the city shall have home rule powers in this field. In fact, the language is so clear that when the Court of Appeals held that rapid transit is a matter of State concern, it said to avoid the effect of the language, that in this case the words were not to be taken in their dictionary meaning.⁸⁵

Similarly, the city's most vital governmental powers—the power to legislate, the power to tax, the power to incur indebtedness—are not under the control of the city, but within the domain of the State Legislature. Is this what was intended by a Constitutional provision giving cities power to deal with their own affairs?⁸⁶

Condemning the practice of having to submit requests to Albany, Con-dello proposed:

The whole matter of state-local relationships requires re-examination, with the prospect of greater emphasis upon meaningful, rather than purely verbal home rule, and simplification of provisions authorizing joint action on a metropolitan level. The examination should consider how metropolitan areas like New York City and Buffalo can best cooperate with their neighbors across state boundaries and make such compacts as may be necessary to facilitate attacks upon mutual governmental problems.⁸⁷

Mrs. Jerome L. Strauss of the Women's Club of New York City added to this chorus:

New York City's fiscal powers are inadequate to meet the probable expenditure level in the years ahead. Under the present Constitutional restrictions, the gap between resources and needs can be met only by piecemeal annual legislation. Further, restrictions on the fiscal powers of the city may in any event be obsolete, particularly in view of the city's size. For these reasons we believe that the Constitutional Convention should consider ways of giving New York City greater fiscal powers.⁸⁸

Donald Walsh, Attorney for the New York State Conference of Mayors, suggested that the constitution guarantee minimum tax and debt limits to municipalities by not permitting the legislature to lower rates beyond a constitutionally set minimum. He proposed to make the minimum the constitutional maximum under the present law. In addition, he proposed to permit local governments to incur additional debt or levy higher realty taxes.⁸⁹

As to the rates themselves, Harold Riegelman, a former Republican candidate for Mayor of New York City, representing the Citizens Budget Committee, felt that the rates on taxation were dangerously high. Riegelman went on to make a cogent and spirited defense of the present system as a basis for preserving fiscal integrity.⁹⁰

85. *Id.* at 5.

86. *Id.* at 5-6.

87. *Id.* at 10-11.

88. *Id.* at 20.

89. Hearings at Albany 6-16.

90. 1 Hearings at New York 60-79.

Many felt the present structure of debt and tax limits to be unrealistic. William Lawless, President of the City Council of Buffalo declared, "tax and debt limits emphasize mathematical computations of margins rather than needs, programs and capacities in the process of fiscal planning." He added, "the provisions in Article 8 of the State Constitution; that is, those that do impose certain debt limits, at times have reached the strangulation point."⁹¹

William H. Edwards of the Political Science Association declared:

Constitutional revision in the field of taxation and finance should consider the possibility of altering or abolishing tax and debt limitations. It should be recognized that real estate is an outmoded basis for determining the financial resources of the community. Hence some basis other than real property should be found for estimating the capacity for incurring debts and levying taxes by local government. Under present circumstances special district and authorities have become a device for circumventing constitutional debt and tax limits.⁹²

Harold Siegel of the United Parents Association noted, "real estate no longer appears to be a realistic base, and if it is going to be continued as a base, certainly the 10 per cent limitation [on debt] has to be changed."⁹³

Alice Sachs spoke for the Americans for Democratic Action. She declared:

In the interests of home rule and the right of local governments to self-determination in fiscal affairs, we should like the elimination in Article VIII of Section 4c, limiting the funded debt of New York City to 10 per cent of the average (for five years) assessed valuation of real estate subject to taxation; and of section 10f, which limits the levy on real estate to 2½ per cent of the average (for five years) full valuation of taxable real estate.⁹⁴

In addition to these basic quarrels over whether or not the legislature should interfere with the tax and debt limits, and whether or not there should in fact be a debt and tax limitation at all, other suggestions were made by those concerned with municipal inability to meet community needs for essential services. Arthur Levitt said, "in short, the present Constitution provides no adequate means for creating governmental instrumentalities whose jurisdictions are coterminous with the social and economic problems with which communities are faced."⁹⁵

Donald Walsh also spoke of the need for special districts and authorities.⁹⁶ Council President Lawless called present county governments "pre-

91. Hearings at Buffalo 9.

92. *Id.* at 93.

93. 1 Hearings at New York 178.

94. *Id.* at 187.

95. Hearings at Albany 30.

96. *Id.* at 6-16.

historic."⁹⁷ William Edwards, seeing the problems inherent in more local government powers and less metropolitan planning and cooperation, spoke out against excessive home rule. He cautioned the Commission not to forget the value of functional integrity.⁹⁸

There was widespread support, led by Mr. Condello for Mayor Wagner, Harold Riegelman, Alice Sachs and Robert J. Levinsohn of the New York Young Democrats, for constitutional provisions to deal with expanded service districts. Miss Sachs declared, "we should advise Constitutional examination of conflicting jurisdictions of towns, cities and villages to eliminate any factors which would inhibit the reorganization of metropolitan government."⁹⁹

Other proposals advanced included pleas for clearer definitions of home rule, a state department of local government, extended annexation rights for cities and more equitable distribution of revenues to local governments. In short, arguments have been all encompassing and brisk, with, generally speaking, persons in positions of influence in municipalities decrying their inability to function properly within the strictures imposed by article VIII of the New York State Constitution.

C. *Personal Recommendations and Proposed Draft*

It is the author's belief that reform in the local finance article must be coupled with reforms in the entire area of home rule powers. As presently stated in the constitution, municipalities are given powers to act with reference to matters "relating to its property, affairs or government." But this power has been interpreted sparingly by the courts and municipal action has invariably yielded in the face of state policies to the contrary. Thus, really effective local government in New York State remains largely a fiction.

Once it is decided to arm local governments with some affirmative grants of power that cannot be derogated from by the constitution itself or by the state legislature, good working government at the lowest and most democratic levels will begin to be encouraged.

Reform of local finance, then, is taken as a corollary to extended powers of local governments. Since that is the case, the local finance article could in fact be appended to the local government article itself. The sections would read:

Section Q. *Each city, county outside of New York City, village, town and school district, excepting those school districts which the Legislature shall exempt, shall have*

97. Hearings at Buffalo 11.

98. *Id.* at 88-95.

99. 1 Hearings at New York 187.

the power to incur debt without constitutional limit as to amount or purpose, and in any incurring of debt by such city, county outside of New York City, village, town and school district, (a) it shall act for a public purpose, relating to the needs of the inhabitants or other localities with which it may engage in joint undertaking, and (b) it shall pledge its faith and credit for the payment of principal and interest thereon.

Section R. *Each city, village, county and school district shall have the power to levy taxes on real property within its bounds without constitutional restriction as to the manner of levy or amounts to be collected.*

Section S. *No limitations shall be imposed by the Legislature on the power to levy taxes on real property by cities, villages, counties and school districts for the payment of the interest on and the principal of all indebtedness.*

Section T. *New York City and all counties except those located wholly within New York City, shall have the right to tax income earned within such locality, by residents and non-residents, by means of withholding or any other feasible means, however, the rate of taxation may not exceed one-half of the rate exacted by the state in its broad based tax on income for the previous year, unless the Legislature shall direct a higher rate. The Legislature shall be without power to restrict further the amount of the levy, its manner of collection, or income to be taxed.*

Section U. *New York City and all counties except those located wholly within New York City, shall have the power to tax all corporations, associations, partnerships or individuals engaged in business, whether for profit or not, within such areas. The Legislature shall be without power to restrict the amount of levy, the manner of collection or basis of taxation.*

Section V. *Each city, county, village, town, and other municipal units shall exercise other powers of taxation which the Legislature may choose to vest. However, once such power has been granted it may not be withdrawn except by a law passed by both houses of the legislature by a 2/3 vote in two successive sessions.*

Section W. *All revenues collected by local governments shall remain the property of such governments to be used for public purposes as the local government may determine and shall not be appropriated by the State or agency of the state for any purpose whatsoever.*

Section X. *The failure of the State to allocate funds for local government use, or to provide services, on an equal basis throughout the state, shall afford local governments a remedy in the courts of the state.*

COMMENTARY

Section Q: This section gives more discretion to local government for purposes of incurring debt and engaging in joint undertakings. It also gives power to the legislature to set tax and debt limits without the limitation of a constitutional tax and debt limit.

Section R: This section removes tax limitations from the constitution.

Section S: This section disables the legislature from limiting taxing power where taxes are levied to meet indebtedness currently outstanding.

Section T: This is a completely new section. An affirmative grant to levy taxes is made to the local governments, a grant which cannot be derogated from by the legislature.

Section U: This section encompasses a fundamental and, in some respects, a revolutionary change. It gives a basic taxing power to the local government and protects it from legislative interference. Of course, there are constitutional protections—both federal and state—that would prevent total usurpation of power by the municipality.

Since the section is so revolutionary, it would only be proposed and indeed seriously considered in light of revolutionary changes in the area of home rule powers, particularly around expanded county government.

Section V: This section makes it more difficult for the legislature to remove powers already given to local governments.

Section W: This is a completely new section, which gives added protection for local governments.

Section X: This section is completely new and provides added protection for local government, with recourse to the judiciary as an arbiter. This proposal presents problems in view of the separation of powers argument, yet it may be the only way of solving the dilemma of unequal distribution.