

SYMPOSIUM: INTRODUCTION— CONSTITUTIONAL ASPECTS OF OHIO LOCAL GOVERNMENT

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It is particularly timely and appropriate that the Law Journal publish this symposium on the relationship of the Ohio constitution to the problems faced by local governments. This is the third symposium of its kind that has appeared in this Journal in the past twenty-four years—Volume 9, No. 1 in 1948, and Volume 21, No. 3 in 1960 were its predecessors. The seminal quality of the first symposium was well described in the foreword to the second:

In 1948, . . . the OHIO STATE LAW JOURNAL made a significant contribution to Ohio municipal law. The unique Ohio constitutional "home-rule" provisions had in great measure lain fallow for 35 years. A comprehensive review of their theory and operation in that issue brought these provisions forcibly to the attention of the bar and the judiciary. The substantial increase in judicial action involving home-rule attests to the impact of that symposium.¹

A look at the 1948 symposium attests to the accuracy of the later characterization—in it, Professor Harvey Walker described the historical background to the adoption of the constitution of 1912; Dean Jefferson B. Fordham presented his pioneering article on home rule in Ohio; Professor C. Emory Glander contributed his study of municipal taxation in Ohio and Professor Murray Seasongood showed how one Ohio city, Cincinnati, had been affected by home rule.

The second symposium was equally important to any student of Ohio local government law. Once again Dean Fordham led the way with a paper illuminating the dilemmas of decision-making in local government; Professor Daniel R. Mandelker explored municipal incorporation and annexation as possible solutions to metropolitan problems; Judge John J. Duffey discussed local self-government as it affected non-charter municipalities; Mr. Henry J. Crawford described restraints on municipal indebtedness in Ohio; Professor Glander returned with a study of state preemption of municipal excise and income taxes under Ohio home rule; Judge Alba L. Whiteside gave a critique on municipal annexation in Ohio; Mr. James W. Farrell, Jr. discussed municipal public utility powers; and Mr.

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¹ 21 OHIO ST. L.J. 272-73 (1960). Parenthetically, that 1948 issue was the first to be published under the title of the "Ohio State Law Journal" and under law school sponsorship; it was brought to life following the hiatus in publishing a journal at the College of Law caused by World War Two. See Dean Fordham's observations at 9 OHIO ST. L.J. 119.

The strong interest which the Journal has continued to show in Ohio local government is no doubt a tribute to the work he began here.

William W. Stanhope described the role of assessments in municipal fiscal policy in Ohio.

Once again, the current symposium updates the Ohio local government case law and lays the foundation for future developments. It continues a publishing tradition of which the Journal can well be proud. Taken together, these three symposia provide the best introduction to local government law in Ohio, and demonstrate the tortuous course the interpretation of the constitution of 1912 has taken.

The organization of the conference on which the papers in the current symposium are based was most immediately prompted by the appointment of the Ohio Constitutional Revision Commission, charged with the responsibility to analyze experience under the Ohio constitution and to make suggestions for revisions.²

The need for such a review is manifest. A perusal of the articles in the three symposia spaced over twenty-four years shows that the basic problems remain. As Mr. Gotherman demonstrates, the Ohio Supreme Court has yet to devise a wholly consistent theory of home rule. Statutory law places significant barriers to area-wide government. When special districts are created to deal with a problem, this adds to the staggering plethora of governmental units groping with local government problems. And as Messrs. Desmond and Sefcovic show, the overlay of an additional governmental unit on the territory of an incorporated municipality may complicate the financial health of the municipality—by “using up” some of the power to borrow without a vote of residents which is imposed by present constitutional provisions on territory rather than governmental units.

As Professor Simmons describes, the present structural forms allow, even encourage, the suburban incorporated city or village to refuse to share the burden of social services needed by the poor. Through restrictive zoning practices, building codes, and similar devices, the poor are kept out, while the central cities, their tax base eroding, their physical structures decaying, must meet the skyrocketing costs with precious little help from their neighbors.

But the situation is not without hope. Dean Fordham takes us through the constitutional provisions which might be considered for change. And the changes he suggests would undoubtedly help—an increased reliance on the legislature as the basic policy-maker, tackling problems that are common to many localities, providing for alternative modes of governmental structure and for increased home rule in governmental units having wider territorial jurisdiction.

Mr. Gotherman shows that the home rule clause, even as presently found in the Ohio constitution, is not a barrier to a vast restructuring of

² Sponsoring the Conference were the Commission, the College of Law and the Ohio Municipal League.

local governmental units. I join him in the belief that there is no constitutional right, under the federal or the Ohio constitutions, to a particular form of local government. The choice, so long as it is equitably applied, is the legislature's. Messrs. Desmond and Sefcovic demonstrate that some simple changes in constitutional and statutory law would enable units of local government to cope with debt without overreliance on the ballot-box—a course which Dean Fordham also advocates.

And so, as a summing up of the past, a picture of the present, and suggestions for the future, this symposium, together with its predecessors, is valuable indeed.