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From Bone Gap to Chicago: A History of the Local Government Article of the 1970 Illinois Constitution, 9 J. Marshall J. Prac. & Proc. 697 (1976)

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FROM BONE GAP TO CHICAGO: A HISTORY OF THE LOCAL GOVERNMENT ARTICLE OF THE 1970 ILLINOIS CONSTITUTION

by JOAN G. ANDERSON

and

ANN LOUSIN

TABLE OF CONTENTS

| | | |
|--|--|-----|
| Introduction | | 698 |
| I. Local Government in Illinois Prior to the Convention | | 699 |
| 1. The Historical Background | | 699 |
| 2. The 1870 Constitution | | 700 |
| 3. Status of Local Government in 1969 | | 701 |
| II. Development of Local Government Article at the Convention | | 705 |
| 1. The Call for a Constitutional Convention | | 705 |
| 2. The Election of Delegates | | 706 |
| 3. The Convention Process | | 706 |
| 4. Member Proposals | | 707 |
| 5. The Deliberations of the Local Government Committee | | 708 |
| 6. First Reading | | 717 |
| 7. The Committee on Style, Drafting & Submission | | 719 |
| 8. Second Reading | | 719 |
| 9. The SDS Second Draft | | 720 |
| 10. The Campaign for the Constitution | | 721 |
| III. The History of the Local Government Article Sections | | 723 |
| 1. The Rejected Sections | | 724 |
| A. Proposed Section 1: Purposes and Construction | | 724 |
| B. Proposed Section 10: General Structures Commission | | 725 |
| 2. The Adopted Sections | | 727 |
| A. Section 1: Municipalities and Limits of Local Government | | 727 |
| B. Section 2: County Territory, Boundaries and Seats | | 729 |
| C. Section 3: County Boards | | 730 |
| D. Section 4: County Officers | | 734 |
| E. Section 5: Townships | | 739 |
| F. Section 6: Powers of Home Rule Units | | 742 |
| a. Subsections 6(a) and (b)—The Grant of Power | | 743 |
| b. Subsection 6(c)—Conflict Between Ordinances | | 749 |
| c. Subsection 6(d)—Prohibited Powers | | 751 |
| d. Subsection 6(e)—Powers Prohibited Unless They Are Granted By the General Assembly | | 753 |
| e. Subsection 6(f)—Forms of Government and Officers | | 761 |
| f. Subsections 6(g), (h) and (i)—Preemption by the General Assembly | | 763 |
| g. Subsections 6(j) and (k)—Debt Restrictions | | 772 |
| h. Subsection 6(l)—Special Assessments and Differential Taxation | | 777 |
| i. Subsection 6(m)—Liberal Construction | | 780 |
| G. Section 7: Counties and Municipalities Other Than Home Rule Units | | 781 |
| H. Section 8: Powers and Officers | | 785 |
| I. Section 9: Salaries and Fees | | 788 |
| J. Section 10: Intergovernmental Cooperation | | 791 |
| K. Section 11: Initiative and Referendum | | 794 |
| L. Section 12: Implementation of Governmental Changes | | 796 |
| IV. Conclusion | | 798 |
| V. How to Use the Appendices and the Record of Proceedings | | 799 |
| VI. Appendix A | | 802 |
| VII. Appendix B | | 804 |
| VIII. Appendix C | | 816 |

FROM BONE GAP* TO CHICAGO: A HISTORY OF THE LOCAL GOVERNMENT ARTICLE OF THE 1970 ILLINOIS CONSTITUTION

by JOAN G. ANDERSON**

and

ANN LOUSIN***

INTRODUCTION

On July 1, 1971, the 1970 Illinois Constitution became the basic law of the state. Of all its provisions, none is more controversial or far-reaching than the Local Government article. For the first time, the Illinois Constitution has all the basic provisions on local government together in one article. Many parts of the article, particularly the provisions on intergovernmental cooperation and home rule, have already substantially affected Illinois law. Therefore, it is necessary for every Illinois practitioner and jurist to become familiar with the contents and development of the Local Government article. The purpose of this study is to provide background knowledge of local government and the history of each section of the article.

Part One of the study describes local government in Illinois from the first settlements to the eve of the Sixth Illinois Constitutional Convention in 1969. Part Two traces the importance of local governmental problems during the campaign to call a

* At the time of the Sixth Illinois Constitutional Convention, convened on December 8, 1969, the smallest incorporated municipality in Illinois was Bone Gap, pop. 245, in Edwards County. The largest incorporated municipality was Chicago, pop. 3,550,404. The convention delegates often referred to these extremes as an example of the difficulty of designing a constitutional framework for governments so disparate in fact although virtually equal in status under the 1870 Constitution.

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*** B.A., Grinnell College; J.D., University of Chicago; Research Assistant, Sixth Illinois Constitutional Convention, 1970; Staff Assistant to the House of Representatives, 1971-1975; Parliamentarian of the House, 1973-1975; Assistant Professor, John Marshall Law School since 1975.

Dedication:

To the memory of two people instrumental in the creation of the new Local Government article: Betty Ann Southwick Keegan (1920-1974), a member of the Committee on Local Government, Sixth Illinois Constitutional Convention (1969-1970), Illinois State Senator (1973-1974), a gracious lady and public servant; and David C. Baum (1934-1973), Counsel to the Committee on Local Government, Sixth Illinois Constitutional Convention (1969-1970), Professor of Law, University of Illinois (1963-1973), a scholar and friend.

convention, the election of delegates, the convention proceedings and the campaign to adopt the proposed constitution. Part Three gives a detailed history of each separate section of the Local Government article from member proposals submitted at the beginning of the convention through the Official Explanation of each section distributed to the electorate before the referendum on adoption of the new constitution. Finally, the Conclusion analyzes the development and importance of the article after five years' experience with it.

I. LOCAL GOVERNMENT IN ILLINOIS PRIOR TO THE CONVENTION

The Historical Background

It is necessary to know some fundamentals of Illinois local government history before one can understand what happened at "Con-Con"¹ and why.² The most important influence on Illinois government, both state and local, is the fact that even while Illinois was part of the Northwest Territory,³ it was settled not only from the northeastern corner by New Englanders, many of whom had lived in Ohio and Indiana, but also from the southern tip by Southerners, especially Kentuckians. The Southerners were accustomed to the county as the basic unit of local government, but the Easterners were used to the New England town or township, with its traditional "town meeting" as the basic unit of local government. Due to this historical accident, 85 of Illinois' 102 counties are subdivided into townships⁴ and most of these lie north of the 17 counties without townships.⁵ The result was that the county and township became basic units of local government, performing many of the ministerial functions of the state. These were suitable forms of government because Illinois, excluding Chicago, was a largely agrarian society until the twentieth century, and the county and township, which

1. "Con-Con" is the popular nickname for the Sixth Illinois Constitutional Convention.

2. This article is not a definitive history of Illinois local government. For a more definitive list of resource materials see Appendix C.

3. The Northwest Territory was created by Congress in 1787 by "An Act for the government of the territory of the United States northwest of the Ohio River," commonly known as the *Northwest Ordinance*. H. COMMAGER, *DOCUMENTS OF AMERICAN HISTORY* (7th ed. 1963).

4. Including Cook, which has active townships only outside Chicago.

5. In 1818, when Illinois became a state, it had 15 counties, 12 of which were located in what is now called "Little Egypt," located in Southern Illinois. See ILLINOIS SECRETARY OF STATE, *COUNTIES OF ILLINOIS—THEIR ORIGIN AND EVOLUTION* 35 (1972). For a good description of county development in Illinois and its results, see D. KENNEY, *BASIC ILLINOIS GOVERNMENT—A SYSTEMATIC EXPLANATION* 235-45 (1970); *THE ILLINOIS FACT BOOK AND HISTORICAL ALMANAC, 1673-1968* 25-36 (ed. J. Clayton 1970).

are based more on geographic boundaries than community interests, were well-suited to agricultural societies.

As one might expect in a state where land was the basis of wealth, the basic tax was a state-wide tax on both real and personal property. The state levied and collected the tax although the counties and townships assessed the property. Throughout the nineteenth century both government officials and taxpayers assumed that a tax on real estate and personalty would be the best means of insuring that wealthier citizens assumed a greater burden of financing government.⁶

The 1870 Constitution

In 1869, when the Fourth Illinois Constitutional Convention met to draft the 1870 Constitution, few delegates would have challenged the reliance on counties and townships as basic units of government and on the general ad valorem property tax as the basic source of state and local revenue. Under the 1870 Constitution, therefore, the basic unit of local government remained the county. Article X was devoted solely to county government and prescribed in great detail the creation of counties, the choosing of county seats and the election of county officers.

By comparison, little attention was paid to the other types of local government. The most significant provision, from the viewpoint of local government development, was Article IX, § 12, which forbade each local government to incur general obligation debt in excess of 5 percent of the assessed valuation of its property. Since the remaining provisions of the Revenue article insured that the ad valorem general property tax would be the mainstay of both state and local government for several decades,⁷ the 5 percent debt limit severely inhibited the ability of existing local governments to raise capital for long-range projects, such as building schools or roads.

When twentieth century demands for more public services collided with these constitutional restrictions, the result was a proliferation of special districts.⁸ These local governments, each with a specialized function, could be created at referenda held pursuant to special enabling legislation. Thus, when a county, township or municipality reached its 5 percent constitutional debt limit, it created a special district at a referendum in the

6. G. FISHER, *TAXES AND POLITICS—A STUDY OF ILLINOIS PUBLIC FINANCE* 127-29 (1969).

7. Illinois did not resort to a sales tax until 1933, nor to an income tax until 1969.

8. A special district is a relatively autonomous local government which provides a single service.

affected area.⁹ Each special district had a single purpose, a separate 5 percent debt limit and a separate tax levy.

There were several reasons, other than avoidance of constitutional restrictions, for the creation of special districts. During the reform era at the beginning of the twentieth century, many observers thought that certain governmental functions ought to be removed from partisan politics. One means of accomplishing this was to have those functions administered by non-partisan appointed officials. In Illinois, where the impetus to clean up government was strong, the trend was to have the judiciary appoint the officials of these units.¹⁰

During the 1930's, several U.S. Government programs stimulated the states to create special districts in order to qualify for federal aid. Special districts are also attractive to voters because they know that the taxes raised by the district are "earmarked" for that function and cannot be siphoned off for other purposes. Illinois, therefore, created more special districts than any other state to provide services which counties and municipalities provided elsewhere.¹¹

Status of Local Government in 1969

When the Sixth Illinois Constitutional Convention formally opened on December 8, 1969, the first and most outstanding characteristic of Illinois local government was the large number of local units. Illinois had the largest number of local units in the United States. Over half of these units had only one purpose—to provide schools or another special service. After World War II the legislature successfully consolidated the school districts, but it never discovered a way to reduce the growth of special districts, let alone eliminate any. Indeed, there were 187 more special districts in 1967 than there had been in 1962, an increase of 8.79 percent.¹²

9. *E.g.*, the districts might be for fire protection, ILL. REV. STAT. ch. 127½, §§ 21 *et seq.* (1975); a tuberculosis sanitarium, *id.* ch. 23, §§ 1701 *et seq.*; or mosquito abatement, *id.* ch. 111½.

10. It should be noted that these officials, in practice, often proved to be highly political, reflecting the political leanings of the appointing judges.

11. See generally J. Anderson, *The Special District in STRUCTURE OF LOCAL GOVERNMENT IN ILLINOIS* (1969).

12. The local units were divided as follows:

| Type | Number in 1967 | Number in 1962 |
|--------------------------|-------------------|-------------------|
| Counties | 102 | 102 |
| Municipalities | 1,256 | 1,251 |
| Townships | 1,432 | 1,433 |
| School Districts | 1,350 | 1,540 |
| <u>Special Districts</u> | <u>2,313</u> | <u>2,126</u> |
| Total | 6,454 | 6,453 |

Bureau of the Census, 1972 CENSUS OF GOVERNMENTS vol. 1, Table 3.

Political factors helped perpetuate local units. Once any government is created, its officers have a vested interest in its continuation. It also develops its own constituency of people who, as users of its services, demand a guarantee that the services be continued by another unit if the special district is eliminated. The legislature rarely provided for such transfer of functions from one government to another. Moreover, if the counties, municipalities and townships surrounding the district are at their constitutional debt limit, they cannot absorb the existing obligations of the special district. Finally, special districts diversify the onus of tax levies and expenditures. Since each district is a separate taxing body, each "tax bite" is deceptively small in comparison to the total expenditure which the taxpayer must support. By 1969, most Chicago suburban property taxpayers supported ten or more local governments.

The second outstanding characteristic of local governments in 1969 was the continued heavy reliance on the ad valorem general property tax as the financial base. Without an income tax,¹³ Illinois relied heavily upon the property tax for the support of elementary and secondary schools.¹⁴ Special districts relied almost exclusively on the property tax as well. Since there were about 32 types of special districts by 1969,¹⁵ all local governments were competing for the available property tax money and were suffering from a growing taxpayer rebellion against rising property taxes. The question of finding alternative sources of financial support for local government was one the convention would have to face squarely.

The third characteristic of local government in 1969 was the rapid urbanization. Illinois was no longer the largely rural society with scattered cities that it had been in 1870. Over 90 percent of the state population growth in the 1960's occurred in the metropolitan areas.¹⁶ In spite of this trend, Illinois continued to be, in many respects, a state of small towns. Over half of its municipalities had a population under 1,000; over 85 percent had a population under 5,000.¹⁷

13. The Illinois Income Tax Act became effective August 1, 1969. ILL. REV. STAT. ch. 120, §§ 1-102 *et seq.* (1975).

14. Approximately 60 percent of the operating expenses and almost all of the capital expenditures of public schools were supported by the property tax. J. BURESH, *A FUNDAMENTAL GOAL: EDUCATION FOR THE PEOPLE OF ILLINOIS* (1975).

15. Cole, *Illinois Home Rule in Historical Perspective*, HOME RULE IN ILLINOIS 11 (Cole & Gove eds. 1973).

16. See generally T. Kitsos, *Constitutional Constraints on Illinois Local Government: The Response of the Sixth Illinois Constitutional Convention*, (1972) (unpublished doctoral thesis of University of Illinois) [hereinafter cited as Kitsos].

17. *Id.*

In almost every respect, all of these municipalities had identical powers and duties under the 1870 Constitution. In 1904 Chicago was given a special status by the adoption of the "Chicago little charter" amendment to the constitution.¹⁸ It allowed the legislature to grant powers to Chicago alone, subject to referendum approval in the city. This was an exception to the constitutional ban on special legislation¹⁹ and was so cumbersome that it was rarely invoked and eventually discarded.

The chief means of granting powers to some cities, while denying them to others, was the legislative device of classification by population. Many Illinois statutes open with the phrase, "A municipality having a population of 500,000 or over."²⁰ This was the magic formula for giving powers to Chicago, the only city of that size. The system failed, however, when Chicago and some smaller cities wanted to exercise a power which the medium-size cities chose not to exercise. The constitutional ban on special legislation made it impossible to allow Chicago and Bone Gap, for example, to tax cigarettes without allowing all the municipalities in between to do so as well.

This constitutional difficulty would not have been so burdensome if Chicago had not been forced to ask legislative authorization to exercise almost every power a city should have. Under the 1870 Constitution, Illinois was generally considered the classic example of a "Dillon's Rule" state. This principle of American state-local government prohibits local governments from exercising any powers not granted them by the legislature.²¹

Illinois case law had expressly recognized its validity under the 1870 Constitution.²² By 1969 it was assumed by most observers that there was no realistic hope that the Illinois Supreme Court would reverse the line of Dillon's Rule decisions which circumscribed municipal actions with a cord woven of strong precedents.

The final outstanding characteristic of Illinois local government was the polarization between Chicago and all other municipalities. Chicago had been a trading post perched on the Chicago River where it met Lake Michigan when Illinois joined the union

18. ILL. CONST. art. IV, § 34 (1870).

19. *Id.* § 22.

20. *See, e.g.*, ILL. REV. STAT. ch. 24, § 1-4-5 (1975).

21. It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation . . . not simply convenient but indispensable.

J. DILLON, LAW OF MUNICIPAL CORPORATIONS 237 (5th ed. 1911).

22. *See, e.g.*, *Ives v. City of Chicago*, 30 Ill. 2d 582, 198 N.E.2d 518 (1964).

in 1818. Within a century, the city had mushroomed into one of the great cities of the world. By 1969, she dominated the economic and cultural life of Illinois—and indeed of the Midwest.

The political and social consequences of this division between Chicago and “Downstate” were enormous. For decades the rural-dominated legislature had been largely unsympathetic to the problems of Chicago, with its successive waves of immigrants of every ethnic and racial group, its slums, its pollution, and its mass transportation crisis. By the mid-1960’s, however, the court decisions regarding legislative reapportionment obliged Illinois and other states to draw their legislative districts on a one man-one vote basis,²³ which gave greater legislative representation to Chicago, the surrounding suburbs, and the large downstate cities—Springfield, Rockford, Peoria, the Quad Cities, and East St. Louis.

Since the Chicago legislative delegation largely consisted of members of the Regular Democratic party organization, whose leader was Mayor Richard J. Daley of Chicago, it had a cohesive force and bargaining power which no other segment of Illinois politics could match. In the General Assembly this political rivalry often resolved itself into the “Chicago” camp and the “anti-Chicago” camp. When Chicago wanted the legislature to give it “Dillon’s Rule” authorization to exercise a power—such as changing the color of its police car lights—the dispute often became a political hassle. The “anti-Chicago” forces often held Chicago bills hostage until they could obtain concessions for their own areas.

By 1969 another force had entered the political arena. The suburbs of Cook County and the five “collar counties”²⁴ had increased greatly in population, partly due to the flight of residents and industries from Chicago’s urban problems. Any demographer could predict that the 1970 census, followed by the 1971 legislative redistricting, would add a third force in the General Assembly in 1972: a largely Republican, ex-urban bloc of legislators whose local governments had problems very different from—and yet somehow similar to—both Chicago and Downstate. No one could forecast how this third force would influence local government legislation. Only one prediction could be made with certainty: the local government provisions in the 1870 Illinois Constitution would be a hindrance to the resolution of local political, social and economic problems.

23. See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962).

24. The five counties sharing a border with Cook are Lake, McHenry, Kane, DuPage and Will, forming the outline of a collar around Cook.

II. THE DEVELOPMENT OF THE LOCAL GOVERNMENT ARTICLE AT THE CONVENTION

The Call for a Constitutional Convention

By the mid-1960's, it had become clear to most observers that the 1870 Constitution could not be amended on a piecemeal basis. In 1950 the "Gateway" amendment to the constitution had made it easier to amend the constitution,²⁵ but only six of the fifteen amendments submitted since 1952 had been adopted.²⁶ Two of those adopted—the 1954 Legislative Reapportionment and the 1962 Judicial Article—were of significance. The only successful proposal directly affecting local government was the 1952 amendment removing the constitutional limits on county officers' salaries.²⁷ Of the nine defeated proposals, three would have amended the Revenue article and three would have allowed county sheriffs and treasurers to succeed themselves.²⁸

In 1965 the General Assembly created a Constitution Study Commission to determine the extent of the need for constitutional revision. The Commission, chaired by Rep. Marjorie Pebworth, recommended that the General Assembly place the issue of whether to call a constitutional convention on the November 1968 ballot. The legislature agreed to do so.

The Committee for a Constitutional Convention, a non-partisan citizens' group, organized the campaign to obtain a successful call. The campaign did not center upon any one issue or set of issues; instead, the theme was to call a convention to "revise" an "outmoded" constitution.²⁹ The revision of local government or revenue provisions did not play an overt role in this campaign.

The urban areas contributed heavily to the affirmative vote for the call. The nine Illinois Standard Metropolitan Statistical Areas³⁰ lie in 19 counties, which contain about 80 percent of the state's population. Of those voters who cast ballots on the issue, 67.5 percent voted "yes." This is in stark contrast to the non-urban counties, where only 48.6 percent of the voters were in favor of a convention. Cook County's percentage was 71.4 percent, about 11 percentage points ahead of the Downstate urban areas, which were about 12 percentage points ahead of the Down-

25. ILL. CONST. art. XIV, § 2 (1870).

26. S. GOVE & T. KITSOS, REVISION SUCCESS: THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 9-11 (1974) [hereinafter cited as GOVE & KITSOS].

27. *Id.* at 10-11.

28. *Id.*

29. J. CORNELIUS, CONSTITUTION MAKING IN ILLINOIS, 1818-1970 142-43 (1972).

30. Standard Metropolitan Statistical Area (SMSA) is an official term used by the U.S. Office of Management and Budget to denote population areas of 50,000 or more with at least one central city.

state non-urban areas.³¹ Clearly, the urban areas, especially the Chicago metropolitan area, wanted constitutional revision more than the rural areas did.

The Election of Delegates

It is impossible to determine the motivations of the 495 citizens who ran for membership in the convention.³² The candidates ran without party labels on the ballot and most organized their own campaigns relatively independently. As a result, the candidates, except those from strongly partisan areas, ran with less party support than they would have in an election with party labels.

Each of the 116 successful candidates ran a campaign based on a different mixture of personality and issues. Many campaigned on the issue of local government reform, namely, governmental structure, taxes and the ethical conduct of local officers. Some had used the phrase "home rule"³³ in their campaign oratory. However, few were well versed in the technical aspects of Illinois local government.³⁴

It seems clear that by the end of their successful campaigns, the delegates were quite concerned about local government problems. An indication of this was the result of a poll of the newly-elected delegates. They listed "revenue matters" as the most important issue facing the convention and "local government/home rule" as the second most important.³⁵

Another indication of their feelings was the delegates' stated preferences for committee assignments. Shortly after the convention opened, the President of the Convention, Samuel W. Witwer, asked each delegate to list his three choices for committee assignments. Sixty-two delegates gave the Committee on Local Government as their first, second or third choice and 49 mentioned the Committee on Revenue and Finance as their choice. These were by far the most popular choices of the delegates.³⁶

The Convention Process

The convention had a formal quasi-legislative process for

31. GOVE & KITSOS, *supra* note 26, at 19.

32. The people elected to the convention were officially known as "members"; however, the common term was "delegates."

33. Home rule is a grant of power to a local government to exercise powers and perform functions without prior authorization from a superior government. In the context of state-local relations, it is a constitutional or legislative grant to a unit of local government, usually a county or municipality, to exercise certain powers or to perform certain functions without specific prior authorization from the legislature.

34. KITSOS, *supra* note 16, at 19.

35. GOVE & KITSOS, *supra* note 26, at 80-81.

36. *Id.* at 62.

resolving all issues, including local governmental problems. In brief, all of the members were asked to submit "member proposals," which were discussion topics or specific solutions to problems. The proposals were assigned to a committee, which held hearings on the topic and reported a draft of the proposed solution to the full convention. The delegates debated each solution three separate times and then inserted the solution into the proposed constitution.³⁷

Member Proposals

The first step was submission of member proposals. From December 8, 1969 until March 10, 1970, the delegates submitted 582 proposals. These are a rough index of what the delegates considered the most pressing constitutional problems facing Illinois and their tentative resolutions of these problems. Of the 582 submitted, approximately 135—or 23 percent—dealt with local government issues, including local taxes and the power and structure of local governments.³⁸ Forty-nine of these proposals were assigned to the Committee on Local Government for further study.

The remainder were assigned to other committees. For example, although local revenue and local debt limits were assigned to the Committee on Local Government, all proposals on property taxes and state guarantees of local debt were studied by the Committee on Revenue and Finance. It is impossible to ascertain the significance of the placing of certain issues in one committee or the other. In effect, the members of the Committee on Local Government were asked to re-structure local government without having direct responsibility for studying the property tax, the most important source of local revenue. The Committee on Revenue and Finance, on the other hand, was asked to devise rules for state guarantees of local debt without knowing for certain what the limits on local debt would be.

As the committees were deliberating, members realized that many problems could not be solved without discussing related topics within the jurisdiction of other committees. The Committees on Local Government and on Revenue and Finance occasionally held joint-hearings on subjects of mutual interest and tried to communicate informally on the progress each was making toward solving problems of mutual concern.

Since most revenue proposals fell within the jurisdiction of the Committee on Revenue and Finance, only nine of the pro-

37. See generally Lousin, *Constitutional Intent: The Illinois Supreme Court's Use of the Record in Interpreting the 1970 Constitution*, 8 J. MAR. J. 189, 190-96 (1975) [hereinafter cited as Lousin].

38. See Appendix A.

posals assigned to the Committee on Local Government were revenue matters, such as local debt. Thirty-four dealt with the officers and structure of local governments, including seven on home rule powers. Six were essentially general, such as a proposed Local Government article, or miscellaneous, such as regulation of local officials' conduct.³⁹

The member proposals reveal two attitudes the delegates brought to the convention. First—and more important—the local government topics which concerned them were county government (27 proposals on the officers and structure of counties) and property taxes (26 proposals on real and personal property taxes). Since most of these proposals suggested changes in the *status quo*, it is clear that many delegates were dissatisfied with two fundamental premises of the 1870 Constitution: that the county should continue its essentially “agrarian” structure and that local revenue should be so dependent upon the property tax. These had been two fundamental policies of local government for the last century.⁴⁰

The second attitude was the widespread support for some form of home rule for the municipalities and, to a lesser extent, for counties. Eighty-two of the 116 delegates—about 70 percent—signed one or more of the home rule proposals; only one delegate signed a proposal prohibiting home rule. Many called for municipal home rule with revenue powers.⁴¹ Obviously, a majority of the convention wanted to consider a constitutional framework of home rule powers as a replacement for, or at least as a supplement to, the county structure and a property tax revenue base. The stage was set for advocates of home rule.

The Deliberations of the Local Government Committee

The heart of the convention's decision-making process was its committee structure. The basic working units of the convention were the nine substantive committees.⁴² The President of the convention nominated the chairman, vice-chairman and members of each committee. He apparently tried to select them on the bases of “balance”—so that each political faction would

39. *Id.*

40. See text accompanying notes 5 and 6 *supra*.

41. See J. Anderson, *The Shaping of Home Rule and the Local Government Article: The Sixth Illinois Constitutional Convention* 2-21 (contained in ILL. MUN. PROBS. COMM. REPORT (1973)) [hereinafter cited as Anderson].

42. The Committees on Revenue and Finance, Education, Local Government, Suffrage and Amending, the Legislature, the Judiciary, the Executive, and the Bill of Rights studied those respective topics. The Committee on General Government studied miscellaneous matters of statewide interest, such as branch-banking, banking, environmental quality, and ethical standards for government officials.

be represented on each committee—and “openness”—so that the members assigned to each committee would have open minds on the major issues assigned to that committee.⁴³

The Committee on Local Government had 15 members, making it one of the largest committees of the convention. Since it was the committee most delegates wanted,⁴⁴ President Witwer's selection of nominations for membership of the committee were especially difficult. Although he had to make his recommendations in a few days and with relatively little knowledge of the views of the delegates, Witwer attempted to balance every substantive committee according to political philosophy or affiliation. There were five broad political factions at the convention:

1) the Cook County Democrats, often called the “regulars” or “Daley Democrats” because they were loyal members of the Cook County Regular Democratic organization chaired by Mayor Daley;

2) the Independents, mostly non-Daley organization Democrats from Cook County;⁴⁵

3) the Cook County Republicans, a looser coalition whose base was suburban;

4) the Downstate Democrats, a widely-scattered group of members who were in the minority in most areas downstate; and

5) the Downstate Republicans, an equally diverse association of members whose party was in the majority downstate.

The Local Government committee had four Cook County Democrats (Brown, Carey, Daley and Stahl); three Cook County Republicans (Anderson, Borek and Woods); three Downstate Democrats (R. Johnsen, Keegan and Peterson); and five Downstate Republicans (Butler, Dunn, Parkhurst, Wenum and Zeglis). On the whole, the members were a representative political microcosm of the convention, although some had stronger party affiliations than others. There were no Independents on the committee. This was one committee which defied analysis by the ordinary, measurable characteristics. The two women did not think or vote significantly differently from the thirteen men. Nor can one say that religion, race, ethnicity, age, education or occupation determined their outlook. The members of the committee were a colorful, complex, often unpredictable lot. They can only be understood one by one.

43. Gove & Kirsos, *supra* note 26, at 59.

44. *Id.* at 62.

45. About 11 were “independent Democrats,” liberal in philosophy and Chicago-oriented; a few were “independent conservatives,” traditional in philosophy and oriented toward no particular part of the state.

The chairman of the committee was John C. Parkhurst of Peoria. A lawyer and a Republican, "Parky" was one of the most gregarious, colorful and pivotal members of the convention. His participation in government at all levels was perhaps unequalled by any other delegate. He had been a township official, county official and state representative. As chairman, he quickly perceived that the most important issue facing the committee was home rule, a goal he personally supported. He guided the deliberations of the committee with a view toward preventing a split of the committee on home rule issues which could frustrate the resolution of other local governmental problems.

The vice-chairman, Philip J. Carey of Chicago, was a suitable counter-balance. A "Regular Democrat," a lawyer and former State Senator, Carey was one of the quietest and most respected delegates. His skill as a negotiator was a valuable asset because home rule was one of Chicago's key goals. Although many delegates quickly developed a dislike for the "Daley delegation," which sometimes wielded its 32 votes too forcefully, this was not the case with the Local Government committee. As a result, the Cook County Regular Democratic organization probably achieved more of its goals in that committee than anywhere else.

Given the subject matter of the committee, it is appropriate to describe the remaining members by the areas from which they came, starting with Chicago and moving outward. There were five Chicagoans, all but one of whom were Regular Democrats.

After Carey, the one with the most experience in government was David E. Stahl. A genial public administrator, Stahl was one of the bright young people recruited by Mayor Daley to provide expertise in running Chicago. Stahl had risen swiftly to the post of Deputy Mayor (an unofficial title given to the mayor's chief administrative assistant), which he held when the convention opened. A diligent student of urban and metropolitan government, he brought a rare combination of academic knowledge and solid experience to bear on the committee's efforts.

Madison Lee Brown was an environmental coordinator in the Chicago Model Cities program. Long active in Chicago NAACP, he was prominent in organizations in Chicago's West Side black community. Brown was a serious, thoughtful man and well-liked by his colleagues.

Richard M. Daley began his career as an elected official with Con-Con, but his political education began years earlier. A lawyer and the son of the Mayor of Chicago, Daley had a chance to learn Chicago government and politics from a unique vantage point, and the convention was his first opportunity to put his

knowledge to official use. His parentage made him one of the best-known and most-observed delegates, so he participated in the committee deliberations with thoughtful caution.

Ted A. Borek was the only Chicagoan on the committee who was not a Regular Democrat. An automobile dealer, he had long been active in civic and Republican party affairs. A traditionalist in many ways, Borek was known as a man who would consider very carefully any novel proposal, such as home rule, before he would support it. Once he espoused a view, however, he defended it staunchly.

There were two members from suburban Cook County, Joan G. Anderson and John G. Woods. Anderson, a Republican, was one of the "League of Women Voters housewives" for whom Con-Con opened a political career. A bacteriologist and chemist, she had long been active in western Cook County suburban affairs. During her years on the State Board of the League her special area of interest was local government; she had written one of the few research papers on special districts shortly before the convention. Serious and thorough, she had a key role in resolution of urban-suburban problems.⁴⁶

John G. Woods, a Republican lawyer, was more extroverted. He had been mayor of Arlington Heights, a large northwest Cook County suburb, during the 1960's. A tough, persuasive advocate of cooperation between cities and suburbs, he made a unique practical contribution to deliberations on metropolitan affairs.

The Chicago suburbs extend far beyond Cook County into most of the five "collar counties." The third suburban delegate, John D. Wenum, came from north-suburban Lake County, sandwiched between Cook County and the state of Wisconsin. Mr. Wenum, a Republican and professor of political science at Lake Forest College, brought an impressive academic background to the committee. He had been on the staff of the Governor of Arizona and his dissertation on annexation problems in Phoenix was published during the convention. Though highly articulate, Wenum did not speak from an "ivory tower" perspective and was a successful advocate with a mellifluous voice.

Besides Parkhurst, six members could properly be called "Downstaters." The inadequacy of this term to describe half of Illinois is very apparent when one attempts to describe the very different people who represented areas as disparate as northern Illinois and Little Egypt.

For Betty Anny Southwick Keegan, being at Con-Con meant coming home. A native of Springfield, she had lived in Rockford,

46. Professor Lousin takes full responsibility for this description.

which she represented, all her adult life. Another of the "League of Women Voters housewives," she had also served on gubernatorial commissions and in Democratic party posts. Conciliatory by nature, she found that her desire to be a "good Democrat" sometimes collided with her wish to write a "good government" constitution.

Edwin F. Peterson, a Democrat from Neponset, was an inventor and businessman for whom public affairs was a long-standing avocation. He had held various city offices, including those of Acting Mayor of Kewanee and of Mayor of Neponset. As serious and taciturn as a New Englander, Peterson brought a background of experience as a local official to the committee.

Donald D. Zeglis, a Republican lawyer from Momence, was interested in modernizing the government of rural counties. Chairman of the Kankakee and Momence Planning Commission, he brought to the committee both his views on streamlining the administration of local government and one of the wittiest tongues at the convention.

Ray V. Johnsen, a Democrat from Troy, was an accountant and former newspaper owner. A thoughtful, earnest man, Johnsen contributed a patient equanimity and a deep understanding of the Metro-St. Louis area of southwestern Illinois, a part of the state which is often forgotten.

The two delegates from Southern Illinois seemed to have little in common besides a devotion to Little Egypt and the courtly manner so typical of the Southern gentlemen of that area. Ralph Dunn, a Republican from DeQuoin, was a businessman. Well-acquainted with small towns and rural Illinois, he saw the modernization of county government as the most important need of local government in his area. A quiet, politically aware man, he worked steadily to achieve this goal.

Robert L. Butler, a Republican lawyer from Marion, was more extroverted than Mr. Dunn. Butler's experiences as Mayor of Marion and county state's attorney gave him a working knowledge of local government law. He perceived a great difference between problems and capabilities of larger cities and those of small towns. Thus, he supported strong home rule powers only if they were not given to the smaller towns and villages. He was one of the most skilled debaters at the convention.

These brief sketches highlight each member's experiences in government. All were active citizens with impressive records in philanthropy, fraternal organizations and civic affairs.

The committee staff was the largest of any at the convention. In addition to the usual committee counsel, administrative assist-

ant and secretary, it had a regular special consultant and a full-time research assistant. The counsel, David C. Baum, was a local government law specialist from the University of Illinois College of Law. Quiet and thorough, he performed his role as counselor and chief draftsman while keeping from the committee the knowledge of his serious illness.

Walter J. Gribben, a special consultant to the committee from the University of Chicago, was an expert on local government. Franklin E. Renner, administrative assistant to the committee, was a law student at the University of Illinois. Steven A. Sutton, the research assistant, was a recent graduate of Yale. Joan Andersen, dubbed "Joan the Other" to distinguish her from the delegate, was the committee secretary.

The first step on the committee's agenda was the organization of the committee and the holdings of hearings. The Committee on Local Government held its first meeting in Springfield on January 7, 1970. The members spent the first few meetings becoming acquainted with each other, assembling the names of organizations that might provide useful information and testimony, scheduling places and dates for hearings outside Springfield, and establishing procedures for hearings.⁴⁷

The committee heard testimony from early January through April. One hundred and eighty witnesses testified on a dozen major topics. The testimony ranged from study group presentations to what seemed to be lobbying by local government officers to preserve their own positions.

One unusual feature arising from the hearings was the group of hearings held outside Springfield, which the press called the "road show."⁴⁸ Some observers had suggested that there were hundreds of Illinoisans who could not testify in Springfield but whose voices should be heard by the convention. During the weeks of February 9 and March 6, 1970, hearings were held in eleven downstate cities,⁴⁹ five suburbs of Chicago⁵⁰ and in Chicago. About 7,000 people attended the hearings, 2,000 of whom testified.

Since almost 160 session hours were devoted to the road show hearings, one might well wonder whether the effort was worth it. Although it was partly a public relations exercise, the road show did serve two valuable purposes. First, it enabled delegates from one part of the state to see and hear for themselves the

47. See generally Anderson, *supra* note 41, at 24-27.

48. Gove & Kirtsos, *supra* note 26, at 65.

49. Alton, Champaign-Urbana, Centralia, East St. Louis, Effingham, Marion, Olney, Peoria, Quincy, Rockford and Rock Island-Moline.

50. Arlington Heights, Joliet, Homewood-Flossmoor, Waukegan and Wheaton.

problems of other Illinoisans. This helped break down some of the parochial barriers people often erect around themselves and their ideas. Second, the road show enabled Illinoisans who were unable or unwilling to travel to Springfield to testify in a more formal setting and to become more aware of the convention itself.

Although it is difficult to calculate the road show's effect on the other delegates, it is clear that the hearings had a substantial impact on the Local Government committee. When some members reconvened in December, 1974, they agreed that the experience had opened many eyes and minds. They also agreed that the road show had been a good public relations move, since groups opposing the document could not claim that the delegates had isolated themselves in "smoke-filled rooms" or "ivory towers."⁵¹

Whether they testified in Springfield or elsewhere, the witnesses generally favored a constitutional underpinning for intergovernmental cooperation and for flexibility and innovation in local government. The greatest need for intergovernmental cooperation arose from each local government's relationship with the state and with its neighboring and overlapping local governments. Out of these hearings came the idea that local governments ought to be better able to contract among themselves for services. Proponents thought this power would be especially useful for small municipalities, since they could contract with counties and larger municipalities for services which the smaller municipalities had difficulty providing.

Another topic frequently mentioned was merger or consolidation of local governments. Much of the committee discussion on this problem centered upon the status of townships. Some members and witnesses advocated their consolidation with county governments, some advocated their total abolition, and some advocated that they continue to be allowed, but not mandated. The last-named choice eventually prevailed.

Because Illinois has more local governments than any other state, many witnesses, including Mayor Daley, called for the consolidation of special districts with municipal and county governments in order to increase operational efficiency at a decreased cost. However, Robert Stuart, general counsel for the Illinois Association for Park Districts, maintained that special districts were more efficient than units of general government precisely because they were able to concentrate their efforts on one function. He conceded, however, that if accounting, collecting and

51. S. COLE, *THE LOCAL GOVERNMENT COMMITTEE RECONVENES: HOME RULE AND INTERGOVERNMENTAL COOPERATION IN ILLINOIS* 40-42 (S. Cole ed. 1975) [hereinafter cited as S. Cole].

investing functions were carried out by county officials, the park districts could still operate efficiently and independently.

The county officers testified for continued constitutional protection of their status. While some of the testimony sounded like self-serving pleas for job security, some of the witnesses made important points. For example, Clayton Harbeck of the Sheriff's Association advocated allowing sheriffs and treasurers to succeed themselves, simply because the people ought to have the right to say whether someone should be continued in office. Other witnesses favored continued protection of certain specific officers whose positions could not be eliminated except by constitutional amendment.⁵²

One of the most frequently mentioned subjects was constitutional restrictions on raising revenue, especially limitations on local debt and taxing powers. Most witnesses emphasized the need for more flexibility in methods of raising revenue and incurring debt than the 1870 Constitution allowed. Mayor Daley and Norman Elkin, of the Commission on Urban Area Government, both stressed the need for debt which could be incurred without seeking referendum approval and without evading the limitation by creating new special districts. Professor James Banovetz of Northern Illinois University suggested a constitutional basis for the state to grant funds or use of its credit to municipalities and counties. Herbert Klynstra, Director of Legislation for the Illinois Agricultural Association, called for the abolition of tax rate limitations.

Most of the testimony and discussion reflected an assumption that the new constitution would provide for some form of home rule. From the beginning of the convention the members thought of Dillon's Rule as a villain.⁵³ The Illinois Municipal League had such an aversion to it that the League's president, Mayor Bernard Cunningham of Park Forest, said that the League's principal recommendation was "Dump Dillon's Rule." However, neither the witnesses nor the committee members could agree on the replacement for Dillon's Rule.

After the committee had completed the hearings stage, it met to consider the draft solutions to the most important problems. The Committee on Local Government had one overriding issue on its agenda: home rule. The Chicago delegates were determined to get strong home rule powers for their city. All other issues—county government, townships, special districts, etc.—were clearly subordinate. Chairman Parkhurst realized he had

52. Walter Oblinger of the Coroners' Ass'n was especially determined to keep these county officers in the constitution.

53. See Kitsos, *supra* note 16, at 19.

“a hot potato” on his hands and decided to defer the final resolution of that issue until he could achieve a consensus in the committee.⁵⁴ While working on home rule, the committee formulated solutions to the other problems, which seemed comparatively less controversial.

For a while, the deliberations proceeded so smoothly that Chairman Parkhurst stated that there might not be any minority reports to the committee report.⁵⁵ Some delegates favored a self-executing constitutional grant of home rule power, while others wanted the legislature to be able to decide who obtained home rule. Another controversial point was whether the powers should be listed specifically or in broad terms. The committee discussed at length the issue of allocating certain powers to the state and others to local governments, as opposed to allowing both levels to exercise powers concurrently.

By April, when the committee had begun drafting the Local Government article, including the home rule provisions, there seemed to be substantial, although not unanimous, agreement on the basic structure of the article.⁵⁶ Then, in late April, Vice-Chairman Carey announced that he and most of the Democrats were dissatisfied with the tentative home rule section because it did not give enough power to home rule units, municipalities in particular. He also said that the dissenters were drafting their own language. From then on, the debate on home rule dissolved into arguments on the precise content of the provision. There was no disagreement on the basic principle of home rule. There were, however, major differences about who should receive home rule powers—big cities or all cities or cities but not counties, the extent of the powers to tax and license, and how the legislature could “preempt”—regulate or prohibit—home rule powers once granted.

There were also debates on certain secondary issues. The committee had compromised on allowing home rule cities to incur a certain amount of debt up to a percentage of their assessed property valuation without obtaining referendum approval. Delegates Borek, Butler, Dunn and Zeglis objected to this rather liberal limit. The committee minority reports indicate that the Democratic delegates (Brown, Carey, Daley, Johnsen, Keegan, Peterson and Stahl) felt that the draft home rule provision was too narrow, while four of the eight Republican delegates (Borek, Butler, Dunn and Zeglis) thought the draft too generous.⁵⁷

54. *Id.* at 20.

55. *Id.*

56. See Anderson, *supra* note 41, at 27.

57. The committee discussions and hearings were taped regularly, but

By late May the committee had divided into subcommittees. For example, a subcommittee on local government debt limits met with members of the Committee on Revenue and Finance and its staff, attempting to coordinate the proposals of the two committees. Meanwhile, the Committee on Local Government was divided internally on that and other issues. By early July the positions of the majority and minority were well delineated.

As a matter of convention practice, the committee counsel drafted the text of the majority proposal and the report explaining the reasons for their decision. Each minority (three or more dissenting delegates) was responsible for drafting the text and report of its proposals. If only one or two delegates objected, they could file separate dissenting proposals or reports. In the end, there were 14 minority reports and 22 dissents filed to 8 of 14 sections of the majority report.⁵⁸

The Local Government committee was the last to submit a proposal. On July 9, 1970, the committee submitted a report signed by all its members with the understanding that some members would submit minority proposals and dissents. Since the committee was under pressure to present a proposal to the convention, it had little time to review the explanatory material—the “report” to each proposal.⁵⁹ On July 16th the minority report was filed.

First Reading

Each committee proposal, including the Local Government article, was “read” to the convention three times.⁶⁰ First Reading consisted of five steps. First, the chairman of the committee selected a member of the majority supporting the section to “sponsor” a section of the article. The sponsor was then responsible for reviewing the staff research and committee deliberations on the section, preparing an explanation of the proposal and presenting it to the convention. He explained the problem the committee was trying to solve and why it had chosen that particular solution.

Second, after he had finished the explanation, delegates asked him and other committee members questions from the floor. Minority proposals to each section were usually presented

are sadly incomplete. What remains is in the convention archives of the Illinois State Historical Library in Springfield.

58. See Appendix B. The members virtually took turns being in the minority. Only Delegates Anderson, Parkhurst, Wenum and Woods signed no minority reports or dissents.

59. See Anderson, *supra* note 41, at 28; S. Cole, *supra* note 51, at 30-32.

60. See Lousin, *supra* note 37, at 193-95, for a general description of the “reading” process.

similarly. One of the difficulties in reading the Con-Con proceedings is that the questions and answers were sometimes planned colloquies. A member would occasionally ask a question from the floor even though he knew the answer, merely to give the sponsor the opportunity to place the committee decision in the record. Occasionally, other members of the committee disagreed with the answer given by the sponsor, but they usually remained silent to avoid confusion of the record.⁶¹

The third step was the amending process, also known as perfecting the section. Any delegate could propose an amendment, stylistic or substantive, to the section. The delegates debated each amendment *seriatim* before voting to accept or reject it. This was usually the point when the most heated exchanges occurred. Several sections were written or substantially rewritten during this process.

On First Reading, the convention faced the problems with which the Committee on Local Government had struggled for six months. As expected, the issue of home rule so dominated the debate that discussion of other issues, some of them very important, was muted and often scanty by comparison.⁶²

There was virtually no opposition to inclusion of some kind of home rule grant; the issues were *who* would receive home rule and *what* would be the nature of home rule. Obviously, Chicago could cope with the responsibilities of home rule if any Illinois city could. The question was whether smaller cities could cope as well, or at all. Some delegates made it clear that they were willing to trust smaller cities with home rule powers if the grant were only a moderate one; but they were not willing to trust them with great powers suitable only to large cities. Since the main differences between the majority and minority reports centered on precisely those issues, the political and social rifts which had appeared in the committee continued on the convention floor. The result of the floor debate was a home rule provision more like the majority than the minority report.

The fourth step was debate on the perfected section. Since almost every section of the Local Government article was amended several times, the debate on major sections was often lengthy and thorough. Some sections, however, were scarcely debated, including the very important—perhaps even revolutionary—section on intergovernmental cooperation.

The fifth and final step of First Reading was the formal

61. S. Cole, *supra* note 51, at 32.

62. *Id.*

vote by the convention to advance a proposed article to the Committee on Style, Drafting and Submission.

The Committee on Style, Drafting & Submission

The Committee on Style, Drafting & Submission (SDS) was probably the most important, and certainly the most controversial, committee of the convention. Each SDS member was also a member of a substantive committee and each substantive committee had at least one member on SDS. Richard M. Daley was the SDS member who was also a member of the Local Government committee. SDS had authority to make only stylistic or non-substantive changes in any proposal. Therefore, it was theoretically impossible for the language suggested by SDS to reflect any substantive intent other than that of the convention. In truth, as any draftsman knows, perfectly innocent word changes can effect significant changes in meaning.

By the time the Local Government article reached SDS, the delegates were acutely aware of the need to monitor stylistic changes. Since the convention had made many changes in the article on First Reading, the counsel to SDS, Arnold D. Kanter,⁶³ completely re-organized the sections on powers of units of local government. The result was a more cohesive and comprehensible article, but some members of the Committee on Local Government thought that their own intent had been altered by the SDS draft.⁶⁴ While these disputes over language continued, the SDS draft was submitted to the convention on August 12, 1970.⁶⁵

Second Reading

Discussion and adoption of the SDS report constituted Second Reading of the article. The convention treated an SDS report just as it treated a substantive committee report. Generally, the convention made few changes on Second Reading, and the Local Government article was no exception. Some proposals defeated on First Reading were offered again but without success. The convention had taken its stance on the major issue, home rule, during First Reading and the delegates were in no mood to upset the delicate compromise achieved in July. One reason for this reluctance was the knowledge that they had just resolved one of the most sensitive issues of local government

63. Mr. Kanter was on leave of absence from his position with the Chicago law firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal.

64. See S. Cole, *supra* note 51, at 32-34.

65. The draft and report, known as Committee on Style, Drafting and Submission Report No. 13, was the unanimous product of that committee. In fact, there were never any minority reports or dissents to SDS reports.

revenue, the status of the ad valorem personal property tax, during Second Reading of the proposed Revenue article.⁶⁶ This compromise was purely political and was one of the most crucial of the convention.⁶⁷ The compromise was predicated in part upon the assumption that the revenue powers of the state and various local governments, including home rule units, would remain substantially as they were after First Reading. To upset those decisions on Second Reading of the Local Government article would be to call the entire relationship between the Revenue and Local Government articles into question again. Although there was an attempt by the addition of § 10 to the Revenue article to reconcile the powers of home rule units with certain limitations on general revenue powers, the convention deliberately left this delicate area undisturbed.

The SDS Second Draft

After the completion of Second Reading, SDS redrafted all the proposals as they had survived Second Reading and submitted the redraft to the convention as a proposed constitution. The redraft⁶⁸ was distributed when the delegates returned for Third Reading on August 27, 1970. Since the convention rules discouraged amendments on Third Reading, few changes were made.

For the convention, Third Reading was a momentous step, during which two major issues of the convention, the methods of selecting members of the judiciary and of the House of Representatives, were heatedly discussed. The political and parliamentary maneuvering during these exciting days was unusual in that, perhaps for the first time, a major development at the convention did not involve local government issues.⁶⁹

By comparison with the turmoil over the legislative and judicial articles, the Third Reading, and Final Adoption of the Local Government article, was tame indeed.⁷⁰ As each section was approved, it was filed with the clerk and printed in final form, a process known as "enrolling and engrossing" (although a weary Chairman Parkhurst called it "embalming").⁷¹

66. RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, *Verbatim Transcripts*, vol. V at 3833-39 (1969-70) [hereinafter cited as *Verbatim Transcripts*].

67. See J. FISHBANE & G. FISHER, *THE POLITICS OF THE PURSE* 152-56 (1974).

68. Committee on Style, Drafting and Submission Report No. 15.

69. For particularly stirring accounts see R. COHN, *TO JUDGE WITH JUSTICE: HISTORY AND POLITICS OF ILLINOIS JUDICIAL REFORM* 105-38 (1973); GOVE & KITSOS, *supra* note 26, 105-12; E. GERTZ, *TO LIFE* 181-84 (1974).

70. *Verbatim Transcripts*, vol. V at 4247-53, 4443-55, 4527-28.

71. *Id.* at 4443.

During the last days of the convention, a special committee drafted explanations of the constitution in layman's language, while another special committee wrote an Address to the People, explaining in general terms what the convention had tried to do. The first committee's task was mandated by § 13 of the convention's enabling act,⁷² which required the convention to tell the electorate what each section of the document meant and how it differed from the 1870 Constitution. This committee, named the Special Committee to Implement § 13 of the Enabling Act, was composed of at least one member of each substantive committee. Two members, Dunn and Stahl, represented the two major schools of thought of the Committee on Local Government. The committee reviewed its staff's proposed explanations⁷³ and quickly discovered that they could rarely agree on the meaning of each section, including those in the Local Government article.

The Committee on the Address, created during the convention's August recess, prepared an Address to the People, which was an open letter to the people of Illinois explaining the convention's decisions on the proposed constitution. One member of the Committee on Local Government, Richard M. Daley, was on the Address committee.⁷⁴ The Official Explanations and Address (a good source of the convention's intent in drafting the Local Government article) were mailed to each Illinois voter in October 1970.

The Campaign for the Constitution

Before adjourning on September 3, 1970, the convention set December 15, 1970 as the date of referendum on ratification of the proposed constitution.⁷⁵ The proponents of one document, including most delegates, organized the Committee for a New Constitution. The other members of the committee were essentially the same groups which had organized the Illinois Committee for a Constitutional Convention in 1968.

The opponents, who rejected the document for diverse reasons, never organized their forces. They attacked the document chiefly through leaflets and letters on the editorial pages of the newspapers, most of which supported the constitution.

During the campaign the Local Government article quickly

72. P.A. 76-40, § 13, [1969] Ill. Laws vol. 1 at 65.

73. Professor Lousin was the principal draftsman of almost all of them.

74. RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, *Comm. Proposals*, vol. VII at 2675 (1969-70) [hereinafter cited as *Comm. Proposals*]; the Address was debated and adopted by the convention on September 2, 1970. *Verbatim Transcripts*, vol. V at 4638-60.

75. *Verbatim Transcripts*, vol. V at 4629.

became a focal point of debate, since home rule was an especially controversial item. The County Officials' Association opposed the document because it felt the counties section⁷⁶ and the provision for home rule counties⁷⁷ would facilitate the abolition of some county offices.⁷⁸ The ad hoc Save Our State organization, a conservative suburban coalition, vehemently opposed the Local Government article, which it thought would lead to metropolitan government for the Chicago area.⁷⁹

On the other hand, the local government provisions were also a factor in winning approval of the constitution. Probably they were a major factor in Mayor Daley's decision to endorse the constitution. It was widely assumed at the convention that the Mayor's four top priorities were: 1) the solidification of Cook County's power to classify real estate for taxes; 2) the retention of the ad valorem personal property tax in some form in Cook County; 3) the retention of the election system of choosing judges; and 4) some home rule power for Chicago. The Mayor realized that he had achieved the first two goals only partially and that the third was left to an uncertain fate as an item to be voted upon separately at the referendum. Surely he also realized that the home rule provisions were probably the most liberal of any in the country.

Mayor Daley probably knew that Chicago could never obtain home rule any other way. The Mayor had been active in the constitutional revision movement since the late 1940's and knew, as well as anyone, how difficult it was to amend the 1870 Constitution. In 1954 the Chicago Home Rule Commission, organized by the Chicago City Council, had declined to make a detailed analysis of the very aspects of home rule which the convention was to discuss sixteen years later. The commission sadly concluded:

In the absence of such analysis, and perhaps even as the result of such an analysis if one is undertaken in the future, constitutional home rule will remain a paradoxical enigma, attractive and appealing, yet unattainable to any significant degree.⁸⁰

He also knew that because Chicago and other home rule municipalities would have a stronger voice in the legislature after the 1971 redistricting (which would reflect the population shifts to the larger cities), the home rule units could prevent any wholesale preemption of their new powers by the legislature.

76. ILL. CONST. art. VII, § 4 (1970).

77. *Id.* § 6(a).

78. GOVE & KITSOS, *supra* note 26, at 132.

79. *Id.*

80. CHICAGO'S GOVERNMENT: ITS STRUCTURAL MODERNIZATION AND HOME RULE PROBLEMS 316 (1954).

It is reasonable to surmise that the Mayor, after weighing these new provisions against those of the 1870 Constitution, concluded that the strong points of the proposed document outweighed the weak ones. From his point of view, home rule was a very strong point indeed.

The role of urban areas, particularly of the Chicago area, in ratifying the new constitution was similar to that in passing the call for a convention. The huge number of votes cast in Cook County was about 2 to 1 for the constitution.⁸¹

Thirty urban counties, containing 75 percent of the state population, ratified. Twenty-six of these counties had supported the 1968 call. On the other hand, 28 counties approving the call rejected the new constitution.⁸²

Of the six counties in the Chicago metropolitan area, only Will County rejected the constitution and all three counties in the Peoria SMSA ratified, but of the 10 counties in the remaining 7 SMSA's, only Rock Island County ratified. Since all of these areas contained at least one home rule municipality, one can only conclude that the local government home rule provisions probably played a large role in obtaining a strong affirmative vote in the Chicago area, but that the provisions apparently had mixed success Downstate.

For better or worse, Illinois now has a new Local Government article. In order to gauge its impact on the resolution of present and future local problems, one must study each section carefully.

III. THE HISTORY OF THE LOCAL GOVERNMENT ARTICLE SECTIONS

This part of the article sketches the history of each section adopted as part of Article VII—Local Government, and of the two proposed sections which the convention rejected. The analysis traces the origin of each section, summarizes the majority and minority committee reports, describes the convention's con-

81. See GOVE & KITSOS, *supra* note 26, at 137.

| | Number of Electors Voting | Percentage Yes Vote |
|--------------------------|------------------------------|------------------------|
| Chicago | 636,349 | 67% |
| Suburban Cook | 396,085 | 65% |
| <u>Cook County Total</u> | <u>1,068,492</u> | <u>65%</u> |
| Downstate | 949,225 | 45% |
| State Total | 2,017,717 | 56% |

See text accompanying notes 29-30 *supra*. The data, which are taken from the Secretary of State's "Official Vote, 1970," and reports of the Cook County and Chicago Board of Elections, do not quite match.

82. GOVE & KITSOS, *supra* note 26, at 135; J. CORNELIUS, CONSTITUTION MAKING IN ILLINOIS, 1818-1970 162-163 (1972).

sideration of the section through Final Adoption, and concludes with references to that section in the "Official Explanations" and "Address to the People."⁸³

The Rejected Sections

The convention rejected two separate sections to the article which the majority of the Local Government committee had proposed. Although they are not in the constitution, these sections helped shape the convention's intent. Often a rejected section indicates intent as clearly, or even more clearly, than an adopted one, since the circumstances surrounding the defeat of an overly-detailed section usually show that the drafters did *not* want to restrict the power of future courts and legislatures. Also, the circumstances may show that the proponents of a provision wanted to keep it vague in order to "sell" the provision to the convention and to the public.⁸⁴

Proposed Section One: Purposes and Construction

The first section to be deleted was proposed Section One of the majority report, which set forth the purposes of the Local Government article and declared that grants of power to local governments should be construed liberally.⁸⁵

The majority report to the proposal⁸⁶ explained that the section contained two different provisions. The first, embodied in the first sentence, was the long list of the goals and principles of the article; the second, embodied in the second sentence, instructed officials, legislators and the judiciary "to construe the powers granted to local governments by the Article liberally in order to help achieve these goals."⁸⁷

The section was unique in Illinois constitution-making, but the majority thought it was advisable for three reasons. First,

83. This part of the article is essentially a redrafting of Anderson, *supra* note 41, 18-81, which was the inspiration for this article.

84. Lousin, *supra* note 37, at 210.

85. *Comm. Proposals*, vol. VII at 1576. The proposed section would have read:

The purpose of this Article is to confirm the rights of the people to local self-government while preserving the sovereignty of the State; to provide for a system of local government in the State of Illinois which is independent, efficient, effective and economical; to deter proliferation of units of local government; to allow reduction of the present number of units; to minimize duplication and overlapping of taxing jurisdictions; to promote intergovernmental cooperation, and to provide a flexible system for the exercise of governmental powers and the performance of governmental functions at the local level which does not require prior recourse to the State. Powers granted to units of local government shall be construed liberally to achieve the foregoing purposes.

86. *Id.* at 1591-94.

87. *Id.* at 1592.

it would provide the officials using the provisions with a guide to interpreting the new, perhaps even revolutionary, article which followed. Second, it would emphasize the convention's desire that local powers, especially home rule powers, no longer be interpreted as narrowly as before. The third reason concerned public relations—the section might help sustain public interest and activity in the local government system.⁸⁸ The dispute arose only over the “purpose” sentence. The minority wanted to delete the section because they considered it entirely unnecessary to have a “preamble” to one article of a constitution and thought it added unnecessary and unenforceable verbiage to the article.⁸⁹

On First Reading, Chairman Parkhurst opened the explanation of this article by outlining the main features of the entire majority report, highlighting the areas he considered the most controversial;⁹⁰ Vice-Chairman Carey outlined the main features of the minority report.⁹¹ When the proposed Section One was considered, the delegates reiterated the same arguments contained in the majority and minority reports.⁹² Finally, the convention realized that the real dispute was over the first sentence and deleted the entire section with the understanding that a delegate later would offer to insert the “liberal construction” sentence into the home rule section.⁹³

Although it was defeated, the “constitutional intent” behind the “Purposes and Construction” section was intriguing. The attitude expressed by the “purposes” sentence obviously pervaded the delegates' perception of the article and was evident throughout their consideration of the remaining sections.

Proposed Section 10: General Structures Commission

The other section deleted by the convention was the proposed Section 10, which established state and local commissions to supervise and recommend changes in local governments, including consolidations and dissolutions.⁹⁴ The committee majority

88. *Id.* at 1593-94.

89. *Id.* at 1859. Delegates Butler and Dunn signed the majority report, but they filed separate dissents from the report, apparently because they disapproved of the “purpose” sentence. *Id.* at 1775-76.

90. *Verbatim Transcripts*, vol. IV at 3022-28.

91. *Id.* at 3028-29.

92. *Id.* at 3031-38.

93. *Id.* at 3037-38. See especially the comments of Delegates Daley, Dunn, Gertz and Leahy. The vote was 59-32.

94. *Comm. Proposals*, vol. VII at 1585-86. The proposed section read:

10.1 A General Structures Commission is established. It shall be composed of five members appointed by the Governor, with the advice and consent of the Senate, for terms of four years. No more

report explained that the reason for the proposal was to provide a mechanism by which the many smaller and less efficient units of local government, particularly special districts, would be encouraged to merge or consolidate their services.⁹⁵ Illinois had already found an effective mechanism of planned consolidation of school districts which was based upon offering the public an alternative method of obtaining educational services, but it had never been able to extend the plan to other units. The suggested solution, a commission to recommend and supervise structural changes, came from various studies of experiences in other states.⁹⁶

A minority of the committee, Delegates Brown, Carey and Daley, proposed deletion of the section.⁹⁷ The minority agreed with the majority's goal of halting the proliferation of local governments but considered the proposal "neither good constitutional draftsmanship nor good legislation."⁹⁸

Parkhurst and Delegate Wenum presented forceful argu-

than three members of the Commission shall be members of the same political party.

10.2 The General Structures Commission shall perform the following functions:

(1) In respect to all units of local government in the State, including counties; to recommend changes relating to any matter of structure, organization, form, offices, boundaries, powers, functions, and duties within, between and among such units; to recommend formation, consolidation, merger, dissolution, and division of such units; to recommend inter-governmental undertakings; and to recommend the formation of Local Structures Commission.

(2) Perform all functions theretofore performed by the Circuit Court respecting the formation and dissolution of units of local government and the alteration of their boundaries; and establish and determine compliance with standards for the formation of units of local government in any county or counties, which standards may be stricter and more comprehensive than those provided by general law.

(3) Perform other functions as provided by general law.

10.3 The Commission may submit its recommendations as one or more questions to a referendum in the area affected. A recommendation shall take effect in each designated unit or area which approves the question.

10.4 A Local Structures Commission may be formed in a county when approved by county-wide referendum, and within that county it shall assume all the powers and functions of the General Structures Commission.

95. *Comm. Proposals*, vol. VII at 1728-33.

96. *Id.* at 1733-39. It was proposed to the convention by Delegate Stahl in *Member Proposal 529*, *id.* at 3083, which was co-sponsored by two other members of the Local Government committee, Wenum and Keegan and by Delegate Kenney. His member proposal would have given significantly stronger powers to the commission than the majority committee proposal. It would have allowed the commission to mandate the consolidation of units of local government or their services and to establish minimum standards for all units of local government.

97. *Id.* at 1933-38.

98. *Id.* at 1938. The minority objected to the proposal

ments for the commission on First Reading.⁹⁹ After considering eight amendments, the convention deleted the entire section.¹⁰⁰ Proponents of the structures commission concept were bitterly disappointed and feared that the new Local Government article would contain nothing to regulate or encourage the reorganization of local governments. On Second Reading, Parkhurst, Wenum and others offered an amendment to add a "Local Government Commissions" section to the article.¹⁰¹ This would have allowed counties to create commissions within each county by referendum or ordinance. The concept of local "general structures commissions" had its genesis in § 10.4 of the "General Structures Commission" section rejected on First Reading,¹⁰² and the proposal offered on Second Reading would have vested the county-level commissions with essentially the same powers as the defeated state and county-level commissions. Obviously, the proponents thought that some delegates, who would not vote for a mandatory state commission, might vote for an optional county-level commission. They were wrong. The vote on adoption was even less favorable than before.¹⁰³ In his remarks on the motion to adopt the Local Government article on Second Reading, Chairman Parkhurst stated that he was "delighted to vote yes," but expressed great disappointment in the convention's failure to establish a mechanism for the orderly reorganization of Illinois' multitude of local governments.¹⁰⁴

The Adopted Sections

Section One. *Municipalities and Units of Local Government*

The first section adopted by the convention defines "municipi-

... [b]ecause it creates a body with powers but without responsibility or accountability to the electorate which is likely to be controlled by partisan factions, because it creates yet another state bureaucracy, because it deals with matters best left to the General Assembly, and because it predetermines decisions on important policy issues.

Id. at 1935. Delegates Dunn and Butler did not sign the minority report, but registered dissents. Although Delegate Dunn had voted for the proposal, he decided that the solution was a legislative, not a constitutional, matter and Delegate Butler feared that the requirement that any structural change be submitted to the people affected at a referendum could be eliminated by a loophole in subsection 3. *Id.* at 1799-1801.

99. See *Verbatim Transcripts*, vol. IV at 3449-78.

100. *Id.* at 3471-78.

101. *Id.*, vol. V at 4195-98.

102. For background on § 10.4 in particular, see *Comm. Proposals*, vol. VII at 1745-46 and *Verbatim Transcripts*, vol. IV at 3451-52, 3467-70.

103. The vote was 34-51. *Verbatim Transcripts*, vol. V at 4198.

104. *Id.* at 4207. The state-level structures commission was proposed in House Bill 1798 and Senate Bill 811 in the 77th Session of the General Assembly in 1971 and in Senate Bill 235 and House Bill 1909 in the 78th Session in 1973. The legislature faced exactly the same obstacles the convention did and no bill has passed.

palities" and "units of local government."¹⁰⁵ The section originated in committee discussions where it became evident that the developing Local Government provisions needed a set of key terms which would be used with uniform meanings throughout the article. The majority decided that the key terms to be defined were "governing board," "municipality," "units of local general government," "units of local special government" and "units of local government."¹⁰⁶ As the majority report indicated, the trend in constitutional and statutory draftsmanship is to define important words and phrases succinctly and to use those words and phrases uniformly throughout the document.¹⁰⁷

The minority's position was that the section was "both unnecessary and cumbersome." While it agreed that definitions were a good practice in drafting statutes, it argued that careful draftsmanship would obviate the necessity for such a section in a modern constitution.¹⁰⁸ Before the debate got underway on First Reading,¹⁰⁹ the minority decided that the dispute was essentially over draftsmanship and could be settled after First Reading by SDS. The minority withdrew its report and the section was advanced to SDS.¹¹⁰

When SDS redrafted the Local Government article, it defined only "units of local government,"¹¹¹ a term which included counties, townships, cities, villages, incorporated towns and single purpose districts.¹¹² Apparently, SDS decided that no other terms needed defining.¹¹³ There were no floor amendments offered to Section One on Second Reading¹¹⁴ and the section was adopted as Section One of the full article.¹¹⁵

After Second Reading, the SDS redraft of the article defined "municipalities" as "cities, villages and incorporated towns" and inserted "municipalities" in place of "cities, villages, [and] incorporated towns" in the definition of "units of local government."¹¹⁶ Since "municipality" was used seven times in the

105. See ILL. CONST. art. VII, § 1 (1970).

106. *Comm. Proposals*, vol. VII at 1576-77.

107. *Id.* at 1595-98.

108. *Id.* at 1863-64. Delegates Butler and Dunn filed dissents from the majority proposal because they considered the proposed "definitions" section, like the proposed "purpose and construction" section, to be inappropriate matter for a constitution. Delegate Dunn added that he found some of the suggested definitions inexact and confusing. *Id.* at 1777-78.

109. *Verbatim Transcripts*, vol. IV at 3032-33, 3037-38.

110. *Id.* at 3038. The vote was 78-1.

111. *Comm. Proposals*, vol. VII at 1954, 1965, 1979-80.

112. *Id.* at 1979-80.

113. *Id.*

114. *Verbatim Transcripts*, vol. V at 4151.

115. *Id.* at 4207-08.

116. *Comm. Proposals*, vol. VII at 2470, 2556 and 2603.

article, it was suggested "on second reading" that the term be defined.¹¹⁷ There was no further debate over definitions, and the section was quietly adopted on Third Reading.¹¹⁸

Section 2. *County Territory, Boundaries and Seats*

Sections Two, Three and Four of Article VII deal with the organization, governing boards and officers of counties and express the convention's desire to remove most of the strictures on county organizations found in the 1870 Constitution.¹¹⁹ The simplest and least controversial provision is § 2.¹²⁰ There were no dissents or minority proposals to the committee proposal.¹²¹ The committee report stated that the first subsection [now § 2(a)] was "an affirmative requirement that the General Assembly provide a method by statute for making changes in the boundaries of the 102 counties of Illinois."¹²² The second subsection [now § 2(b)] restated the referendum requirements for changing county boundaries which had been part of the 1848 and 1870 Constitutions.¹²³ The last subsection [now § 2(c)] eliminated many of the details on changing county seats but retained the essential requirement that a three-fifths vote be obtained before a county seat may be changed. Presumably the committee agreed that an extraordinary vote requirement was necessary to prevent arbitrary changes in county seats.

117. *Id.* at 2603 and *Verbatim Transcripts*, vol. V at 4247. This suggestion is not readily apparent from the floor proceedings; perhaps a delegate made it privately to the SDS committee.

118. *Verbatim Transcripts*, vol. V at 4247, 4527-28. The vote was 99-8 with 3 pass. The Official Explanation of the section states: "This section is new. It defines the phrases 'units of local government' and 'municipality' which are used throughout this Article." *Comm. Proposals*, vol. VII at 2724. There is no mention of the section in the Address to the People, which summarizes the entire article in two paragraphs, *id.* at 2675.

119. ILL. CONST. art. XX, §§ 1-4 (1870). Delegate Woods proposed that all of these matters (except removal of the county seat) be left to the legislature, *Comm. Proposals*, vol. VII at 3009, *Member Proposal* 378. Delegate Lewis suggested that any proposed division, merger, rearrangement or removal of the county seat ought to be submitted to the people of the two affected areas at a referendum, *id.* at 2888, *Member Proposal* 96. The committee proposal was truly a majority proposal. The vote was 12-0 with one pass and 2 absent. *Id.* at 1851.

120. See ILL. CONST. art. VII, § 2 (1970).

121. The text of the majority proposal was:

5.1 The General Assembly shall provide by general law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between and among counties.

5.2 County boundaries shall not be changed unless approved by referendum in each county affected.

5.3 County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.

Comm. Proposals, vol. VII at 1581.

122. *Id.* at 1690.

123. *Id.* at 1691-92.

The primary aim of the Local Government committee was to give the legislature great discretion in territorial reorganization of counties, subject to referendum. Delegate Peterson, who presented the section for the committee, encountered few questions and no opposition and the section was adopted unanimously on First Reading.¹²⁴

In redrafting the Local Government article after First Reading, SDS shifted the three provisions on counties from the middle, after the sections on powers of local governments, to the beginning of the article. The section entitled "County Territory, Boundaries and Seats" became § 2 of Article VII. Having made only stylistic changes in the section, the committee proposed it to the convention in its final form.¹²⁵ The convention adopted the redraft without debate either on Second Reading¹²⁶ or on Third Reading, when it was finally adopted.¹²⁷

Section 3. *County Boards*

The second section dealing with counties provides for the election of county boards having general supervisory authority. Sections 5(a) and (b) of the Transition Schedule provide for the retention of the existing county board systems unless a county changes the board by referendum.¹²⁸ The Chairman of the Cook County Board of Commissioners is elected as the President or Chief Executive by the voters of the entire county; all other chairmen are elected either by the voters or by the board members. The 1870 Constitution, in keeping with its emphasis on the role of county governments, attached great importance to the organization of county boards.¹²⁹ While attempting to make this system less rigid, the Local Government committee had to keep in mind the provisions of the county board reapportionment act passed by the General Assembly in 1969 to conform to the one man-one vote principle.¹³⁰ There were three types of county organization in the 1870 Constitution and the statutes:

- 1) Cook County, with ten members elected from Chicago and five members elected from suburban Cook;

124. *Verbatim Transcripts*, vol. IV at 3224-26. The vote was 69-0.

125. *Comm. Proposals*, vol. VII at 1954, 1966, and 1980.

126. *Verbatim Transcripts*, vol. V at 4207-08.

127. *Id.* at 4527-28. The Official Explanation states:

This section replaces Article X, Sections 1 through 4 of the 1870 Constitution. It combines and simplifies these sections, retains their essential purposes, and requires a vote of the people before a change can be made in county boundaries or county seats.

Comm. Proposals, vol. VII at 2724. The Address to the People does not mention the section. *Id.* at 2675.

128. See ILL. CONST. art. VII, § 3 (1970).

129. *Id.* art. X, §§ 5, 6, 7 (1870).

130. ILL. REV. STAT. ch. 34, §§ 831-40 (1969).

2) township counties, the eighty-four counties divided into townships, with a board of supervisors and assistant supervisors, one from each township, to be the "county board of supervisors" before the 1969 reapportionment statute changed that system; and

3) commission counties, the 17 counties not organized into townships and governed by a board of three commissioners elected at large.¹³¹

The committee consensus was that the election of county boards should be left to the legislature and the people of the counties.¹³² There was no dispute over the basic principles of subsections 6.1, 6.2 and 6.3 (now art. VII, § 3), which merely "unfroze" the old constitutional sections and reflected the provisions of the 1969 County Reapportionment Act.¹³³ The first difficulty arose when the majority tried to reconcile these new constitutional requirements with the fact that increasing a commission county's number of board members meant changing

131. ILL. CONST. art. X, §§ 5, 6 and 7 (1870).

132. The majority proposal read:

6.1 A county board shall be elected in each county.

6.2 The number of members of the county board shall be fixed by ordinance in each county within limitations provided by general law.

6.3 The General Assembly shall provide plans for the election of county board members, which may include election at large or by districts. Any plan of election shall be available to all counties, but plans of election shall not be changed unless approved by county-wide referendum.

6.4(a) Members of the county board of Cook County shall continue to be elected from two districts, one district being the City of Chicago and the other that part of Cook County outside the City, until a new plan of election is submitted to referendum and approved by a majority of votes cast in each district.

(b) The plan of electing members of the county board in each other county as established on the effective date of this Article, or as established thereafter to comply with state apportionment laws in effect on such date, shall not be changed unless approved by county-wide referendum.

6.5(a) The number of members of the county board of Cook County elected pursuant to the plan described in paragraph 6.4(a) shall continue to be fifteen unless increased by the county board to comply with apportionment requirements.

(b) The number of members of the county board in each county which elects three members at large shall not be changed unless approved by county-wide referendum.

Comm. Proposals, vol. VII at 1582-83, 1694-1700.

The committee's majority report, found at *id.* at 1693-1701, was essentially the proposal adopted by the convention; the first three subsections became Article VII, § 3 and the last two subsections became § 5 of the Transition Schedule.

About five member proposals concerned county boards: *Member Proposal 57* (Borek), *Member Proposal 314* (Reum) and *Member Proposal 378* (Woods) concerned the Cook County Board of Commissioners exclusively; *Member Proposal 472* (Perona) provided the minority representation on the Cook County Board and *Member Proposal 473* (Perona) provided for minority representation on the boards of counties under 100,000 population.

133. *Comm. Proposals*, vol. VII at 1582, 1693-98.

the actual form of government. Resolution of this dilemma was accomplished by the transition provisions in § 6.5(b), which allowed a county to change the number of board members existing on the effective date of the constitution only by a county-wide referendum.¹³⁴

The real controversy arose from the provisions for Cook County. The committee realized that projections for the 1970 U.S. Census, then in progress, indicated that the existing 2-1 ratio between Chicago and the rest of Cook County would create an unconstitutional imbalance in favor of the city, which meant that the number of board members might have to be increased.

The solution to the problem was to create an exception to the concurrent referendum requirement of proposed § 6.5(a) for increasing Cook County board members "to comply with apportionment requirements."¹³⁵ The committee also realized that the present two-district election system, based on multi-member districts, might someday be replaced with another system, such as single member districts throughout the county. They knew if a referendum on a new system were held county-wide, the Chicago votes would easily swamp the suburbs and that any referendum would therefore have to be approved separately by the voters in the city and the suburbs. The solution to the second problem was the transition provision retaining the Cook County board election system "until a new plan of election is submitted to referendum and approved by a majority of votes cast in each district."¹³⁶

Delegates Brown, Carey, Daley, Keegan, Peterson and Stahl filed a minority proposal.¹³⁷ They argued tactfully that the unique characteristics of Cook County justified constitutional protection for the present "accommodation of the conflicting interests and politics of Chicago and the rest of the county."¹³⁸

The minority proposal also clarified the existing position of the President of the Cook County Board of Commissioners as the "chief executive officer" of the county and left the question

134. *Id.* at 1583, 1700-01.

135. *Id.* at 1582-83, 1700-01.

136. *Id.* at 1582-83, 1698-99, Majority Proposal 6.4(a).

137. They proposed the following substitute for § 6.4(a) and § 6.4(b):

The County affairs of Cook County shall be managed by a board of commissioners of fifteen persons, or as many additional commissioners as the county board may deem necessary to have the membership of the Board provide for equal representation according to the population of two districts, one of which shall be the city of Chicago and the other the remainder of the county. The President of the county board shall be chief executive office (*sic*) of the county and shall be elected by the voters of the entire county. When authorized by county ordinance, he may also be elected as a member of the board.

Comm. Proposals, vol. VII at 1917-22.

138. *Id.* at 1922.

of his being elected as a board member a matter for county ordinance.¹³⁹ The obvious reason for this addition was to make it absolutely clear that Cook County did indeed have a chief executive officer for the purpose of obtaining county home rule within the majority's home rule proposal.¹⁴⁰

The final text of § 3 and the Transition Schedule is essentially the majority's proposed § 6 with two additions adopted by the convention.¹⁴¹ Delegate Carey offered only the portion of the minority proposal dealing with the President of the Cook County Board which the convention adopted.¹⁴²

Delegate Dvorak then offered an amendment to allow division of Cook County into single-member districts.¹⁴³ After debate on the wisdom of allowing abolition of the two-district system, the convention adopted the amendment, apparently with the understanding that the change to single member districts by ordinance would occur only once.¹⁴⁴ When this major obstacle was removed, the convention unanimously advanced the county boards section to SDS.¹⁴⁵

After First Reading, SDS basically reorganized the amended provision, placing some subsections into the text of the Local Government article and others into the Transition Schedule and renumbered the provision as § 3.¹⁴⁶ On Second Reading, Delegate Tecson offered an amendment which would have reversed the Dvorak amendment and mandated the two-district system in the county. The ensuing debate indicated that some suburban Republicans feared that single member districts might be gerrymandered against the suburbs. However, the Tecson amendment was defeated.¹⁴⁷ The convention made no further substantive changes in the section,¹⁴⁸ there was no further debate, and it

139. *Id.* at 1918, 1920-21.

140. *Id.* at 1577.

141. On First Reading, Delegate Carey offered the minority proposal but, after lengthy debate, withdrew it. *Verbatim Transcripts*, vol. IV at 3234-44. The minority proposal was amended with Carey's consent by Delegate Cicero, *id.* at 3239. The Cicero amendment was essentially the same as the Dvorak amendment offered later at *id.* at 3246-47.

142. *Id.* at 3244-46. The first sentence was adopted by voice vote and the second by a hand vote of 51-35.

143. The amendment read: "The county board may by ordinance divide the county into single-member districts from which members of the county board resident in each district shall be elected." *Id.* at 3246-47.

144. *Id.* at 3246-51. The vote was 53-36.

145. *Id.* at 3252. The vote was 81-0.

146. *Comm. Proposals*, vol. VII at 1954-55, 1966-68, 1980-83.

147. *Verbatim Transcripts*, vol. V at 4151-55. The vote was 61-54.

148. SDS made some stylistic changes in its draft of the constitution prepared after Second Reading, *Comm. Proposals*, vol. VII at 2470-71, 2556-57, 2604, and SDS Report No. 15, Article VII, § 3. On Third Reading, Delegate Carey offered a successful amendment to clarify the convention's intent that only once could the county board ordain a single member districts system without referendum. Otherwise, the single member districts system could be defeated at a referendum, only to be instituted by ordinance, *Verbatim Transcripts*, vol. V at 4447.

was adopted on Third Reading as part of the final article.¹⁴⁹

Section 4. *County Officers*

The most controversial and complicated of the three sections pertaining to counties is § 4, which provides for the election or appointment of county officials and the creation or elimination of certain county offices.¹⁵⁰

The 1870 Constitution had dealt with county offices in great detail. Each county had six constitutionally-mandated officers: the county judge, county clerk, sheriff, treasurer, coroner, and clerk of the circuit court. Counties having at least 60,000 inhabitants also elected a recorder of deeds.¹⁵¹

A century later, many citizens' groups and Con-Con delegates wanted to abolish certain county offices, but they faced opposition from the county officers. Most of the committee testimony and member proposals centered on which offices should be mandated, permitted or eliminated.¹⁵²

Section 4(b) was originally part of Minority Proposal 11, which established the position of the President of the Cook County Board as the chief executive officer of Cook County. This was crucial, since the election of such an officer was the "trigger" for automatic home rule in Cook County.¹⁵³

149. *Verbatim Transcripts*, vol. V at 4527-28. The Official Explanation of the section states:

This replaces Article XX, Sections 5, 6, and 7, of the 1870 Constitution. It simplifies the requirements of those sections and allows the form of county government to be changed by a vote of the people involved. Subsection (c) provides a more flexible procedure for election of the members of the Cook County Board.

Comm. Proposals, vol. VII at 2725. The Address to the People is even more succinct: "Traditionally rigid county governments may be reorganized following referendum or Board action." *Id.* at 2675.

150. See ILL. CONST. art. VII, § 4 (1970).

151. *Id.* art. X, § 8 (1870).

152. *Member Proposal 7* (Knuppel) permitted sheriffs and treasurer to succeed themselves, *Comm. Proposals*, vol. VII at 2845; *Member Proposal 94* (Miska) permitted sheriffs to succeed themselves, *id.* at 2887; *Member Proposal 85* (Lewis) removed the coroner as a mandatory officer, *id.* at 2884; *Member Proposal 177* (Leahy) established a Chief Medical Examiner, *id.* at 2921; *Member Proposal 142* (Dunn) established the treasurer as collector of all taxes in the county, *id.* at 2905; *Member Proposal 552* (R. Johnsen) and *Member Proposal 557* (Durr) placed responsibility for the county courthouse in the county board rather than the sheriff, *id.* at 3093 and 3103; *Member Proposal 109* (Lewis) provided for service of county officers in more than one county, *id.* at 2893; *Member Proposal 503* (Hendren) provided that appointed offices could be made elective at a referendum, *id.* at 3068; *Member Proposal 122* (Gertz) allowed the General Assembly to abolish any county office, *id.* at 2898; and *Member Proposal 507* (Daley) dealt with compensation of Cook County officers, *id.* at 3069.

153. See text accompanying notes 222-23 *infra*. After First Reading SDS shifted the "trigger" provision to § 3(d) on "County Boards," *Comm. Proposals*, vol. VII at 1955, 1967, 1981-82, and after Second Reading to § 4(b), *id.* at 2471-72, 2558 and 2604.

Subsections (a), (d) and (e) of § 4 are derived from corresponding subsections of the majority's proposed § 7. Subsection (c) of § 4 is a combination of the majority's proposed §§ 7.1 and 4.3 and specifies the status of each county officer.¹⁵⁴

Section 4(a) allows the election of a chief executive officer of a county. There was virtually no controversy over this provision. The majority report makes it clear that the main reason for allowing election of a chief executive officer was to enable counties to obtain home rule powers.¹⁵⁵

Section 4(c) describes the creation and elimination of county offices. There was significant disagreement in the committee and on the floor on how far the convention dared go in reducing the number of county officers required by the 1870 Constitution. The majority of the Local Government committee mandated the election of a sheriff, clerk and treasurer for four-year terms. All other offices, either elective or appointive, could be provided for according to law or ordinance.¹⁵⁶ The report made it clear that the majority was not persuaded that the two offices denied continued constitutional protection, those of the coroner and recorder of deeds, were critical to the operation of modern Illinois county government.¹⁵⁷ The coroner system, for example, could

154. These sections of the majority report read:

7.1 Each county shall elect a sheriff, a county clerk and a treasurer, and may elect and appoint other officers as provided by general law or by county ordinance, subject to the provisions of Paragraph 4.3, and Section 10. Terms of elected county officers shall be four years, and officers shall be elected at general elections commencing in 1974 in the manner provided by law.

7.2 Elected and appointed officers shall have the powers, functions, and duties provided by law and by county ordinance. They shall have no power, function, or duty derived from common law or historical precedent.

7.3 The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in the county.

7.4 Any county may elect a chief executive officer as provided by general law. He shall have the powers and duties provided by general law and by county ordinance. Any county which elects a chief executive officer may exercise the powers granted by Paragraph 3.1(a).

Comm. Proposals, vol. VII at 1583-84. Paragraph 3.1(a) was the grant of home rule powers in the majority proposal.

Section 4.3 Any unit of local government may by referendum adopt, alter, and repeal alternative forms of government provided by general law, and it may by referendum provide for the number of its officers, their terms of office, the manner of selecting them, and their powers and duties.

Id. at 1579.

155. *Id.* at 1711. Although three members voted against the majority proposal, there were no minority reports or dissents and only brief debate before the section was adopted on First Reading. *Verbatim Transcripts*, vol. IV at 3303-04.

156. *Comm. Proposals*, vol. VII at 1583. Any office could be eliminated by referendum.

157. *Id.* at 1702-08.

easily be replaced by a statewide medical examiner system;¹⁵⁸ and the functions of the recorder of deeds might be assumed by the clerk, as was already the case in counties with fewer than 60,000 people.¹⁵⁹ Sheriffs, treasurers and clerks, on the other hand, were able to convince the committee that their respective offices deserved constitutional protection. In fact, the committee eliminated the prohibition on sheriffs and treasurers succeeding themselves.¹⁶⁰

Many members of the committee disputed the majority's conclusion.¹⁶¹ The minority suggested mandatory election of a coroner in all counties, an assessor in each county over 1,000,000 and a recorder in each county with more than 60,000 population.¹⁶² The minority proposal would have retained the constitutional status of the coroner and recorder of deeds and extended constitutional protection to the Cook County assessor. The minority argued that because the assessor was such a "vitally important officer" in Cook County and because recorders in larger counties played such "a vital role in the economic life" of their counties, both offices merited constitutional status. The coroner should be retained, the minority said, until an acceptable alternative, such as a board of forensic pathologists, could be found.¹⁶³

The convention discussed the "constitutionalization" of the various county offices at great length on First Reading.¹⁶⁴ When Delegate Brown moved the minority proposal,¹⁶⁵ the question was divided as to the three officers to be granted constitutional protection. The convention decisively rejected attempts to mandate election of a coroner in each county.¹⁶⁶ It also rejected efforts to mandate election of an assessor in counties of 1,000,000 or more population,¹⁶⁷ and of a recorder in counties of 60,000 or more population.¹⁶⁸ However, the convention readily

158. *Id.* at 1704-05.

159. *Id.* at 1705-06.

160. *Id.* at 1708.

161. The vote on § 7.1 was 9-5, with 1 absent. *Id.* at 1851.

162. *Id.* at 1923-27. Minority Proposal 1J, submitted by Delegates Brown, Carey, Daley and Peterson.

163. *Id.* at 1926. Delegate Bulter dissented because he thought it allowed counties too free a hand in creating new offices, *id.* at 1795, and Delegate Zeglis suggested in his dissent that counties specifically be allowed to elect a coroner, recorder or auditor. Zeglis proposed language which he thought gave the legislature freedom to create an Office of Medical Examiner or Regional Auditor for groups of counties instead of county coroners or auditors. *Id.* at 1796-97.

164. *Verbatim Transcripts*, vol. IV at 3252-83.

165. *Id.* at 3254.

166. *Id.* at 3264. The roll call vote was 44-58, with one pass.

167. *Id.* at 3265. The roll call vote was 38-56, with 3 passes.

168. *Id.* at 3267-68. The roll call vote was 48-53 with two passes.

adopted Delegate Zeglis's suggestion that each county be permitted to elect any or all of the three officers and an auditor.¹⁶⁹

While the convention refused to mandate the election of more than the sheriff, treasurer and clerk, it also rejected an amendment to make election of all officers permissive.¹⁷⁰ Considered together, these votes indicate that the delegates did not want to prohibit these offices, but wanted to cease making them mandatory.¹⁷¹ The convention then amended § 7.1 to make it clear that any county office could be abolished either by the structures commission created by § 10¹⁷² or by a county referendum.¹⁷³ After accepting an amendment to clarify the duration of the county officers' terms,¹⁷⁴ the convention advanced § 7.1 to SDS.¹⁷⁵

Section 4(d) is the descendant of the majority's proposed § 7.2. The only controversy in this subsection was whether the common law duties and powers of county officers, particularly sheriffs, should be continued and whether the legislature or county board could alter or nullify those powers and duties. By the second sentence of its proposal, the majority intended to nullify earlier Illinois case law providing that the sheriff's common law powers and duties, including that of custody of the county courthouse, continue in force.¹⁷⁶ Delegates Brown, Carey, Daley, Peterson and Stahl submitted a minority report deleting the controversial sentence because they thought the effect of the "abolition" of common law powers and duties was unclear.¹⁷⁷

On First Reading,¹⁷⁸ it became clear that the difference

169. *Id.* at 3268-73. The hand vote was 53-33.

170. The convention rejected Delegate Howard's amendment substituting for § 7.1 the following: "Each county may elect or appoint officers as provided by general law or by county ordinance." *Verbatim Transcripts*, vol. IV at 3273-75. The hand vote was 29-56.

171. The convention also rejected Delegate Butler's amendment, based on his dissent, to substitute "as provided by general law and by county ordinance" for "as provided by general law or county ordinance" (emphasis added). He thought this change would prevent a county board from creating and eliminating offices with every change in its political composition in spite of the absence of legislative authority to create such an office. *Verbatim Transcripts*, vol. IV at 3275-78; the vote was 10-66.

172. See discussion of the rejected section at text accompanying notes 94-104 *supra*.

173. See *Verbatim Transcripts*, vol. IV at 3278-81. The convention rejected Delegate Elward's language by a hand vote of 42-43, *id.* at 3281, but accepted Delegate A. Lennon's language by a hand vote of 46-27, *id.* at 3282.

174. Offered by Delegate Lyons and adopted by voice vote, *id.* at 3283.

175. *Id.* at 3283. The vote was 77-0.

176. *Comm. Proposals*, vol. VII at 1709-10, and *Member Proposals* 552 and 557. The committee vote on § 7.2 was 9-4 with two absent. *Id.* at 1851.

177. *Id.* at 1929-32; Minority Proposal 1K.

178. *Verbatim Transcripts*, vol. IV at 3283-96.

between the majority and minority was one of form, not intent. The convention accepted Delegate Weisberg's language as a compromise substitute for the majority's second sentence: "[County officers] shall have the powers, functions, and duties derived from common-law or historical precedent unless altered by general law or county ordinance."¹⁷⁹ After accepting an editorial change to make it clear that either the legislature or the county board could prescribe duties for each county officer,¹⁸⁰ the convention advanced the section to SDS.¹⁸¹

Section 4(c) is the successor to the majority's § 7.3. The committee report makes it clear that the purpose in authorizing the county treasurer to act as treasurer for other local governments was to promote economy and efficiency of fiscal operations.¹⁸² This subsection was relatively non-controversial. On First Reading¹⁸³ the convention added the requirements that limited the circumstances under which the county treasurer could act for the other local units,¹⁸⁴ and advanced the amended section to SDS.¹⁸⁵

After First Reading, SDS renumbered § 7 as § 4 and rearranged the subsections.¹⁸⁶ On Second Reading¹⁸⁷ SDS submitted an addendum to its report to change its proposed § 4(c).¹⁸⁸ It also made supplementary changes in its proposed §§ 8(d) and 9(a)(3) to effect the corrections in § 4(c).¹⁸⁹

179. *Id.* at 3291.

180. *Id.* at 3292-94.

181. *Id.* at 3296. The vote was 63-3.

182. *Comm. Proposals*, vol. VII at 1710-11. Although four members of the committee voted against the proposal, no one filed a minority report or dissent. *Id.* at 1851. The nay votes were cast by Delegates Brown, Carey, Daley and Stahl.

183. *Verbatim Transcripts*, vol. IV at 3296-3303.

184. *Id.* at 3301.

185. *Id.* at 3303-04. The vote was 65-7.

186. It placed § 7.4 at the beginning as § 7(a) to emphasize the importance of the chief executive officer, *Comm. Proposals*, vol. VII at 1983-84. In redrafting present § 4(c) the committee tried to reconcile § 4.3 (renumbered as § 7(a)(3)), which allowed home rule units to provide for their elected officers, with the intent of the convention to mandate certain county offices, *id.* at 1983-85; the convention's intent to allow home rule units more latitude than others in electing county officers was not clear and SDS requested clarification. It also crystallized the intent of the convention regarding the times at which officers would be elected and the authority of the county treasurer to act as treasurer for units of local government in his county. *Id.*

187. *Verbatim Transcripts*, vol. V at 4150-65.

188. The Addendum read:

Offices may be eliminated and the terms of office and manner of selection changed by county-wide referendum and, except in the case of the offices of sheriff, county clerk and treasurer, by county ordinance.

RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, *Daily Journal*, vol. I at 626 (1969-1970) (hereinafter cited as *Daily Journal*). See *Verbatim Transcripts*, vol. V at 4151. Section 4(c) was originally referred to as § 4(b).

189. *Daily Journal*, vol. I at 626.

Delegates Dunn and Zeglis questioned whether SDS's redraft of § 4(c) actually reflected the convention's intent after First Reading. This re-opened the discussion of which offices, other than those of sheriff, clerk and treasurer, could be elected or appointed and how county offices could be eliminated.¹⁹⁰ In order to facilitate resolution of this drafting problem, the convention recessed—ostensibly for supper, but in fact to allow the interested parties to draft acceptable language.¹⁹¹

The acceptable language was the present § 4(c), with punctuation differences, and was offered as a substitute amendment by Delegates Dunn and Anderson. It delineated those offices which may be eliminated or changed by referendum, those by law and those by county ordinance. Delegates Zeglis and Carey offered a substitute amendment requiring a county-wide referendum for elimination of or changes in county offices except those of sheriff, clerk and treasurer,¹⁹² whose offices could not be eliminated at all. This brought to a climax the entire question of the constitutional status of the other officers, particularly whether the General Assembly should be allowed to eliminate or change them. The debate was brief but lively, and the convention defeated the Carey-Zeglis amendment by only three votes.¹⁹³ After the defeat of the Carey-Zeglis amendment, the voice vote adopting the Dunn-Anderson amendment was anticlimactic.

SDS made only a minor stylistic change in § 4 after Second Reading,¹⁹⁴ and the section was adopted without debate as part of the final article.¹⁹⁵

Section 5. Townships

Section 5 of Article VII and § 5(c) of the Transition Schedule

190. *Verbatim Transcripts*, vol. V at 4155-57.

191. *Id.* at 4157.

192. *Id.* at 4160.

193. *Id.* at 4162; the vote was 47-50. The convention also defeated an amendment to give a "recorder in counties over 60,000 population" the same status as clerks, treasurer and sheriffs. *Id.* at 4164; the vote was 42-52.

194. *Comm. Proposals*, vol. VII at 2471-72.

195. *Verbatim Transcripts*, vol. V at 4528. The vote was 83-0. The Official Explanation of § 4 reads:

This replaces Article X, Section 8 of the 1870 Constitution. This section requires the election of a Sheriff, County Clerk and Treasurer in each county. It permits the election or appointment of a Coroner, Recorder, Assessor, Auditor and other officers as provided by law. It deletes the prohibition that the Sheriff and Treasurer shall not succeed themselves. Any county office may be created or eliminated by county-wide referendum.

Comm. Proposals, vol. VII at 2726. From reading this explanation, one would never know how controversial eliminating some county officers was. The Address to the People does not even mention county officers. *Id.* at 2675.

concern the formation, consolidation, mergers and dissolution of townships.¹⁹⁶

Townships governments,¹⁹⁷ which existed in 84 counties and suburban Cook County, were as sensitive an issue as county officers. Many townships, like many county offices, are the power bases of political organizations in their counties. In Cook County the base of the Republican party was the suburban township organizations, each chaired by a township committeeman.

By 1969, some citizens' groups, particularly the Illinois League of Women Voters, favored transferring township functions either to a strengthened county board or to the municipalities. One member proposal, in fact, advocated the constitutional abolition of townships.¹⁹⁸ The Township Officials Organization vigorously opposed abolition of townships, claiming that townships were manageable units of local government, were close to the people to whom they were responsible and performed valuable services for the residents of unincorporated areas of counties.

The committee proposal was divided into three components, dealing with formation, rearrangement and county-wide dissolution.¹⁹⁹ Subsection 8.1 essentially reiterated a comparable provision in the 1870 Constitution,²⁰⁰ and is identical to the first sentence of present § 5 of Article VII. The subsection reflects the basic policy decision to define townships as units of local government, to continue to give them a constitutional status and to allow abolition of townships only by referendum.²⁰¹

There was no counterpart to proposed § 8.2 in the 1870 Constitution. The committee decided, however, that constitutional provisions on the rearrangement of townships, including individual townships, were advisable. The committee required approval of such a rearrangement at a local referendum to insure

196. See ILL. CONST. art. VII, § 5 (1970) and *id.*, trans. sch. § 5(c).

197. The term refers only to civil townships, not school townships or the congressional or survey townships laid out pursuant to the Northwest Ordinance. See remarks of Delegate Anderson, *Verbatim Transcripts*, vol. IV at 3401.

198. *Member Proposal 42, Comm. Proposals*, vol. VII at 2868.

199. The proposal read:

8.1 The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum.

8.2 Townships may be consolidated, merged, or divided, and one or more townships may be dissolved, when approved by referendum in each township affected.

8.3 All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

Comm. Proposals, vol. VII at 1584.

200. ILL. CONST. art. X, § 5 (1870).

201. *Comm. Proposals*, vol. VII at 1712-14.

continued local decision-making.²⁰² There were no minority reports and no dissents filed to the first two subsections.

Subsection 8.3 differed from the 1870 Constitution chiefly in requiring a referendum only for county-wide dissolution in that area from which township officers were elected instead of from the entire county. The change was obviously in deference to residents of Downstate townships abolished individually and to Cook County suburbanites. Under the old language, the county-wide dissolution referendum would be held in all of Cook, including Chicago which has no active townships, and whose votes for dissolution could easily overwhelm the negative votes in the suburbs.²⁰³

On First Reading²⁰⁴ controversy arose over the ambiguous status of townships in existence on the date of adoption of the constitution. In order to assure that existing townships continued in full force, the convention adopted Delegate Mathias's proposed schedule providing for the continued existence of townships until otherwise altered in accordance with the constitution or statutes.²⁰⁵

After the convention advanced § 8 to SDS,²⁰⁶ that committee merely renumbered the section as § 5, placed the Mathias schedule into the Transition Schedule, and made minor style changes.²⁰⁷ The convention adopted SDS's changes without debate on Second Reading²⁰⁸ and the section was adopted

202. *Id.* at 1714-15. The committee voted jointly on these two subsections. The vote was 8-3 with one pass and 3 absent. *Id.* at 1851.

203. There are official Chicago townships, but they have been inactive for decades. See Delegate Anderson's comments at *Verbatim Transcripts*, vol. IV at 3393. The committee vote was not unanimous: it was 9-1 with 3 passes and 2 absent. The one negative committee vote was cast by Delegate Butler, who stated in his dissent that § 8.3 seemed unnecessary in light of § 8.2, that it was ambiguously worded, and that it left open "the possibility that one heavily populated township desirous of dissolving itself could undertake to dissolve all townships in the county even though the majority in each of the other townships may be opposed to such dissolution." *Comm. Proposals*, vol. VII at 1798. Although Delegate Butler presented the questions raised in his dissent, he offered no floor amendment to clarify the relationship between §§ 8.2 and 8.3.

204. *Verbatim Transcripts*, vol. IV at 3392-3403.

205. The schedule read:

Townships as they exist on the date of the adoption of this article shall continue until consolidated, merged, divided, or dissolved in the manner provided by law or in accordance with Section 8 of this Article.

Id. at 3394, 3398-3401.

206. Section 8.1 was approved by a vote of 74-0, *id.* at 3402-03; § 8.2 was approved by a hand vote of 79-1, *id.*; § 8.3 was approved by a hand vote of 102-0, *id.* at 3403.

207. *Comm. Proposals*, vol. VII at 1956-57, 1969-70, and 1985-86.

208. *Verbatim Transcripts*, vol. V at 4207-08. SDS deleted the classifi-

as part of the final article on Third Reading.²⁰⁹

Section 6. *Powers of Home Rule Units*

Section 6 of Article VII is perhaps the most revolutionary provision in the constitution. Often called simply "the home rule article," this section directly invests certain municipalities and counties with home rule power and makes it available to the rest. The section sets forth the internal mechanics of home rule government.²¹⁰

Because the prior history of local government in Illinois was essentially one of legislative supremacy over units of local government of all sizes and types, the emergence of a strong constitutional home rule provision seems almost revolutionary.²¹¹ However, there was a strong base of support for constitutional grants of local government powers. Six member proposals advocated home rule in some form, while only one totally opposed it.²¹² No member of the Committee on Local Government opposed home rule in principle. The majority report indicated that the committee unanimously wished to reject Dillon's Rule.²¹³

The report summarized the testimony for home rule, which centered on the need for decision-making by the governmental units closest to the people they serve.²¹⁴ It also included the

cation into subsections after Second Reading. *Comm. Proposals*, vol. VII at 2473, 2559.

209. *Verbatim Transcripts*, vol. V at 4528. The Official Explanation states:

This replaces Article X, Section 5 of the 1870 Constitution. It retains referendum provisions for forming or abolishing township government throughout the county. It adds referendum provisions for combining, dividing, or dissolving one or more township governments. Existing townships are continued unless changed in accordance with this section.

Comm. Proposals, vol. VII at 2726. The Address to the People does not mention townships. *Id.* at 2675.

210. See ILL. CONST. art. VII, § 6 (1970).

211. See Part II of this article for a description of the status of Dillon's Rule on the eve of the convention.

212. *Member Proposal* 75 (Netsch) suggested a reversal of Dillon's Rule for all cities and counties, which was the proposal of the National Municipal League; *Member Proposal* 98 (Woods) advocated municipal home rule; *Member Proposal* 144 (Zeglis) suggested the municipal home rule proposed by the Illinois Municipal League; *Member Proposal* 408 (Rachunas) opposed any home rule, although Delegate Rachunas eventually supported the Local Government article on Second Reading, *Verbatim Transcripts*, vol. V at 4207-08; *Member Proposal* 414 (Anderson) suggested that any home rule provision retain for the state the power to legislate in matters of statewide concern; *Member Proposal* 527 (Butler) advocated home rule for all municipalities and counties; and *Member Proposal* 541 (R. Johnsen) suggested home rule for all municipalities, counties and townships.

213. "The Local Government Committee unanimously believes that a system of home rule is superior to the existing system of legislative supremacy, and that home rule should be included in the new Constitution." *Comm. Proposals*, vol. VII at 1604.

214. *Id.* at 1605-11.

arguments against home rule, such as the fact that metropolitan (city plus suburbs) government was a better solution to urban problems than home rule,²¹⁵ and answered this particular argument by contending that metropolitan problems could best be solved by encouraging intergovernmental cooperation in metropolitan areas and by the state's assuming those burdens which cannot be handled by numerous small units of government.²¹⁶ The report concluded:

The Committee is convinced, however, that the actual risks created by a home rule system are small, that abuses can be corrected by action of the General Assembly, whose jurisdiction is expressly preserved in the Committee's draft, and that whatever risks do exist are outweighed by the benefits which should flow from increasing the autonomy of cities and counties which receive home-rule powers.²¹⁷

After agreeing upon home rule in principle, the committee fell into disagreement on the specific provisions. The chief disputes centered upon whom was to obtain home rule, how it was to be obtained, what revenue powers home rule units should have, and how the state could regulate home rule units.

————Subsections 6(a) and 6(b)—The Grant of Power

The majority's proposed § 3.1 was the predecessor of §§ 6(a) and 6(b).²¹⁸ The subsection described the basic nature of home rule power and established how counties and municipalities could obtain it. The committee decided that conditioning home rule status upon legislative authorization would invite a return to Dillon's Rule.²¹⁹ It rejected the "charter" system, by which a unit achieves home rule status only by adopting a specified home rule charter at referendum, because the system seemed unduly complex and placed "undesirable impediments in the path of the development of home-rule."²²⁰

There was also little controversy in committee over the granting of home rule to counties as well as cities. County home

215. *Id.* at 1611-14.

216. *Id.* at 1615.

217. *Id.* at 1614-15.

218. § 3.1 of the Majority Proposal reads:

3.1(a) Any county which has a chief executive officer elected by the voters of the county and any municipality which has a population of more than 20,000 may, within its corporate limits, exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt.

(b) Any other municipality may by referendum elect to be included within, and any county or municipality may elect to be excluded from, the provisions of paragraph 3.1(a).

Comm. Proposals, vol. VII at 1577-78.

219. *Id.* at 1616-17.

220. *Id.* at 1617-18.

rule, the committee believed, would be consistent with the article's attempts to modernize and strengthen county government. A home rule county could perform many services previously performed by special districts, thus reducing the need for those single-purpose units, and could also coordinate the powers and functions of metropolitan areas.²²¹ To temper the broad grant of county home rule, the committee required that a county elect a chief executive officer before it could obtain home rule powers. The committee decided that only a county with separate legislative and executive functions could have the governmental structure necessary to exercise home rule powers responsibly.²²² In effect, this provision gave automatic home rule to Cook County, the only county electing a chief executive officer, although any other county could utilize present § 4(a) to elect one in order to obtain home rule.²²³

A six-member minority consisting of the four Chicago Democrats and two of the Downstate Democrats²²⁴ filed two minority reports. The first report extended home rule to "any city, village and incorporated town" unless the municipality rejected home rule status at a referendum.²²⁵ The minority rejected the majority's decision that only municipalities with 20,000 or more population had an urgent need for home rule powers and the ability to use them effectively. Smaller municipalities, the majority said, were not likely to have the necessary economic resources to make home rule meaningful.²²⁶ The minority contended that smaller cities also had pressing urban problems and that there was no need to classify cities into those receiving automatic home rule and those which did not.²²⁷

The other minority report advocated home rule for all counties, but would have limited the exercise of the powers to unincorporated areas of the county.²²⁸ The minority thought that the differences in the nature and constituencies of counties and municipalities could produce jurisdictional disputes when a home rule county ordinance conflicted with a home rule municipal ordinance.²²⁹

221. *Id.* at 1631-33.

222. *Id.* at 1633-36.

223. *Id.* at 1634-35.

224. Delegates Brown, Carey, Daley, Keegan, Johnsen, and Stahl.

225. *Comm. Proposals*, vol. VII at 1865-73, Minority Report 1C.

226. *Comm. Proposals*, vol. VII at 1628-29.

227. *Id.* at 1868-73. Delegate Zeglis, who did not sign that minority report, filed a dissent which extended home rule to all "cities, villages and counties," *id.* at 1780. Delegate Butler filed a dissent to that part of § 3.1(a) which granted home rule units the power to tax without specific legislative authorization, *id.* at 1779. Delegate Keegan filed a separate statement in support of minority reports 1C and 1F, which dealt with the proposed § 3.2 more than § 3.1. *Id.* at 1783-86.

228. *Id.* at 1897-1905, Minority Report 1F.

229. *Comm. Proposals*, vol. VII at 1900.

Chairman Parkhurst had selected the irrepressible Delegate Woods to present the majority's home rule proposal. He opened with this much-quoted passage:

I'm supposed to talk to you about home rule. Home rule, many of you might know, is like sex—when it is good, it is very, very good, and when it's bad it's still pretty good. . . . So don't you listen to a thing that the minority guys are going to try to sell you.²³⁰

After the delegates finished questioning the majority and minority of the committee about every facet of home rule,²³¹ the amending stage began. The most important question was the "trigger" for each kind of home rule. The convention rejected Delegate Daley's amendment to delete the requirement of an elected chief executive officer before a county could obtain home rule status.²³² Delegate Dunn offered an amendment requiring municipalities to vote on home rule status at a referendum before they could become home rule units. This amendment was also rejected.²³³

By this point everyone was aware that the trigger for automatic county home rule was to be the election of a chief executive officer and that the trigger for automatic municipal home rule was to be a population threshold, not a referendum. The "numbers game" began. Delegates argued for population thresholds ranging from 0 to 200,000. After a lengthy debate the convention adopted Delegate Daley's amendment striking the 20,000 population requirement in the majority report, thereby extending home rule to all municipalities from Chicago to Bone Gap.²³⁴

The Daley amendment had a profound effect upon the rest of the home rule discussion on First Reading, for it was obvious that the question of which municipalities had home rule was inextricably intertwined with the question of the nature of home rule. Many delegates who might have voted to give strong home rule powers to Chicago or other large cities were not willing to extend such broad powers to smaller cities. The most fascinating question about home rule on First Reading was why the Chicago Democratic delegation supported the extension of home rule status to all municipalities. Why should they have cared whether Bone Gap obtained home rule? The most likely answer is that the Chicagoans, who were interested in a grant of strong

230. *Verbatim Transcripts*, vol. IV at 3038.

231. *Id.* at 3038-60.

232. *Id.* at 3060-65. Amend. No. 1, which contained the core of Minority Report 1F, failed by a hand vote of 47-52.

233. *Verbatim Transcripts*, vol. IV at 3071-72; defeated by voice vote.

234. *Id.* at 3065-70. Amend. No. 2 embodied part of Minority Report 1C and was adopted by a roll call vote of 57-53.

home rule for Chicago, found an ally in the smaller Downstate cities. The spokesman for those cities was the Illinois Municipal League, which was interested in obtaining home rule for as many Downstate cities as possible. There was almost certainly an informal alliance between the two forces, the combination of which had the attention of more than half of the delegates. The ultimate result was a relatively generous grant of home rule for both Chicago and a large number of Downstate cities.

During the week in which the convention decided upon the remaining home rule provisions, the threshold remained at zero. During that week the convention visualized a home rule city as not only a Chicago, Rockford or Springfield, but also one of the thousands of small towns scattered across Illinois. Gradually the delegates realized that just as it had been foolish to hitch Chicago into the Dillon's Rule harness made for Bone Gap, it might be equally unwise to hitch Bone Gap into a Chicago-style harness much too big for it to handle. During the following week, the convention added no more amendments to the basic grant of home rule power. In fact, it rejected four amendments.²³⁵

On July 29, 1970, after a week of debating the Local Government article, Delegate Netsch offered an amendment placing the municipal home rule threshold at "a population of more than 10,000."²³⁶ She argued:

Most of us believe—or some of us believe—that it would not be wise for a variety of reasons to give automatic home rule to every one of the some 1,200 municipalities in the state of Illinois. Many of them are obviously too small, too unorganized, have too small a tax base, and in many cases have too little interest in possessing the kind of initiative power that this grant of home rule entails.²³⁷

235. The four were Amend. No. 4 (Gertz-Elward), *Verbatim Transcripts*, vol. IV at 3072-75, discussed, *infra*; Amend. No. 6 (Lawlor), *id.* at 3080-81, which attempted to fix responsibility for home rule in the local officers; Amend. No. 7 (Butler), *id.* at 3082-83, discussed, *infra*; and Amend. No. 8 (Daley), *id.* at 3083-85, which would have amended § 3.1(b) regarding referenda. Since it was determined to be a style change, the amendment was withdrawn. Amend. No. 4 would have made it clear that a home rule unit could exercise its powers beyond its corporate limits if the General Assembly authorized such extra-territorial jurisdiction. Since the delegates were afraid that some opponents of metropolitan government would attack the provision as a subtle introduction of metropolitan government into Illinois, they defeated the amendment, 38-64, *id.* at 3072-75.

Amend. No. 7 to § 3.1 was an attempt to limit the basic home rule power "to tax" to situations where such a power was "provided by law." In effect, Dillon's Rule would have continued in the field of taxation. The convention quickly realized that home rule status was meaningless without home rule revenue power and defeated the amendment, *id.* at 3082-83; the hand vote was 20-69.

236. *Id.* at 3316-24.

237. *Id.* at 3316.

After repeating the usual arguments for and against a population trigger for municipal home rule, the delegates overwhelmingly adopted the Netsch amendment.²³⁸ Resuming the numbers game, the delegates decided that the home rule powers they had debated and adopted the previous week were too strong for smaller cities, towns and villages. The convention seemed well satisfied with the 10,000 population figure, which would have given automatic home rule to 140 municipalities,²³⁹ and rejected all further attempts to change that figure on First Reading.²⁴⁰ The delegates then amended § 3.1(b) to specify that a municipality could "opt out" of home rule by referendum²⁴¹ and advanced the key home rule provision, § 3.1, to SDS.²⁴²

When SDS re-arranged the Local Government article after First Reading, it made three significant changes in the basic home rule provisions. First, and most importantly, it added the phrase "except as provided by this Section."²⁴³ The committee gave no explanation for this change, although its action was obviously an attempt to assert the dominance of the home rule section over other parts of the constitution and indeed over other parts of the Local Government article. Presumably, this means that home rule units have all the powers granted by §§ 6(a) and (b), limited only by §§ 6(c) through (m). The General Assembly could make the remainder of the constitution binding on the home rule units only by preempting specific home rule powers under §§ 6(g), (h) and (i). Courts could check the power of a home rule unit only by narrowly interpreting the powers and functions "pertaining to its government and affairs." No one challenged this "stylistic" change on the floor of the convention.

The next most important change was SDS's deletion of the phrase "within its corporate limits" as a restriction on the home rule power.²⁴⁴ This phrase was in the original majority report and the convention had voted not to vest the legislature with the power to grant home rule units extraterritorial jurisdiction on First Reading.²⁴⁵ The committee did not explain why it had, in effect, given home rule units a constitutional grant of

238. *Id.* at 3324; the hand vote was 86-13.

239. *Id.* at 3316.

240. Amend. No. 18 (Friedrich) would have raised it to 30,000, defeated by a hand vote of 34-36, *id.* at 3324-25; Amend. No. 1 to Amend. No. 18 (Durr) would have lowered it to 2,000, defeated by a hand vote of 14-52, *id.* at 3324-25; Amend. No. 19 (Fay) would have raised it to 50,000, but, although Delegate Fay accepted Delegate Lewis's amendment to 45,000, it was defeated by a voice vote, *id.* at 3325.

241. *Id.* at 3325-26.

242. Section 3.1(a) was advanced by a hand vote of 85-4, *id.* at 3325, and § 3.1(b) was advanced by a hand vote of 71-2, *id.* at 3326.

243. *Comm. Proposals*, vol. VII at 1958, 1971, 1987.

244. *Id.*

245. See discussion of Amend. No. 4 (Gertz-Elward) in note 235 *supra*.

extraterritorial jurisdiction in the face of the convention's refusal to allow a legislative power to grant such jurisdiction. No one challenged this change on the floor.

The third major change effected by SDS was the deletion of the phrase "including but not limited to" after the general grant of home rule power. The majority and minority of the Local Government Committee had agreed that it would be wise to try to obviate any possibility of judicial restriction of the broad grant of power by specifying the basic powers to be included in the grant. The phrase chosen was "including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt." SDS defended the deletion as a removal of unnecessary language which could "only serve to limit that [broad home rule] power."²⁴⁶

On Second Reading the delegates apparently did not contest SDS's changes in present §§ 6(a) and (b).²⁴⁷ They adopted the only two amendments offered to present § 6(a), the grant of power, and offered no amendments to § 6(b), the opt-out referendum.

Both amendments to § 6(a) are extremely important. Vice-Chairman Carey offered an amendment reinstating the "including but not limited to" phrase deleted by SDS²⁴⁸ and the convention proceeded to reinstate the important phrase without debate.²⁴⁹ The other amendment was more controversial. Delegate Butler moved to set the population threshold for automatic municipal home rule at 25,000 rather than 10,000.²⁵⁰ Butler defended the classification by population of cities receiving automatic home rule, and argued that most residents of cities with 25,000 or fewer inhabitants did not understand and did not want home rule.²⁵¹ His plea was successful and the population threshold was fixed at 25,000.²⁵²

246. *Comm. Proposals*, vol. VII at 1990.

247. SDS had renumbered §§ 3.1(a) and (b) of the Local Government committee proposal as it survived First Reading as §§ 8(a) and (b); the shift to § 6 occurred after Second Reading.

248. He offered no rationale for the decision besides the cryptic comment: "We were talked out of including [the phrase] by Style and Drafting. We now think that it should be in, and both the chairman and myself would like unanimous consent to reinsert it." *Verbatim Transcripts*, vol. V at 4181.

249. *Id.*

250. *Id.* at 4165.

251. *Id.* at 4166.

252. *Id.* at 4165-67; the hand vote on Amend. 1 to § 8(a) was 63-27. Butler was Mayor of Marion, Ill. whose population was about 11,700. Probably no delegate who voted on that magic figure knew that the outstanding study on Illinois municipal finance had concluded in 1967 that only cities with more than 25,000 population had a high degree of regularity in their expenditure and revenue processes. G. FISHER & R. FAIRBANKS, *ILLINOIS MUNICIPAL FINANCE: A POLITICAL AND ECONOMIC ANAL-*

After Second Reading, SDS made no significant changes in the first two subsections of the home rule section.²⁵³ On Third Reading,²⁵⁴ the convention refused to suspend the rules to allow consideration of an amendment reestablishing 10,000 as the population threshold for automatic municipal home rule and quickly adopted the final section.²⁵⁵

—————*Subsection 6(c)—Conflict Between Ordinances*

This subsection is substantially the same as the committee's proposed § 3.3, which said that a municipal ordinance would supersede a conflicting ordinance of a home rule county.²⁵⁶ The scope of this provision was narrow, but within those limits, very important. It applied only to home rule counties enacting ordinances pursuant to their home rule powers. It neither addressed itself to county-wide conflicts if the county was not

ysis 2 (1968). This study apparently substantiates the argument that only cities of that size could employ the personnel needed to make the wisest use of home rule powers, especially revenue powers, a position advanced, *inter alia*, by Delegate J. Parker, *Verbatim Transcripts*, vol. V at 4167.

253. Basically, it renumbered § 8 to be § 6 and rearranged some sentences, *Comm. Proposals*, vol. VII at 2473, 2559.

254. *Verbatim Transcripts*, vol. V at 4443, 4446, 4451.

255. Delegate Woods suggested that the rapid growth rate in the Chicago suburbs, as indicated by the preliminary 1970 U.S. Census data, justified this reduction, *id.* at 4446. See "A people boom in suburbs," *Chicago Sun-Times*, Aug. 29, 1970, at 1, col. 1, published the day before Delegate Woods moved to suspend the rules, which motion failed 38-49. The final adoption of the section was at *Verbatim Transcripts*, vol. V at 4528.

The basic home rule powers are described fully in the Official Explanation:

This section is new. Under the 1870 Constitution, local governments have only those powers which the State, through the General Assembly, chooses to give them. This section grants home rule powers to any municipality with more than 25,000 people and to any county which has an elected chief executive officer. Smaller municipalities may have home rule if the people so choose by referendum. Any municipality or county, by referendum, may elect not to have home rule powers.

A home rule unit has broad general powers to regulate for the protection of public health, safety, morals, and welfare, to license for regulatory purposes, to tax, and to incur debt.

Comm. Proposals, vol. VII at 2727-28.

The Address to the People features home rule in its description of the Local Government article:

The heart of the Local Government Article is in its provisions for home rule, a concept not included in the present Constitution. Home rule units are defined as any county having a chief executive, elected by the voters, and any municipality having a population of more than 25,000. Any smaller municipality may in referendum elect to become a home rule unit; and any home rule unit may in referendum elect to give up home rule status. Home rule units have wide discretion as to the powers and functions each will exercise and perform.

Id. at 2675.

256. Local Government committee's proposed § 3.3 read: "If a county ordinance adopted pursuant to paragraph 3.1(a) conflicts with a municipal ordinance within the corporate limits of the municipality, the municipal ordinance shall prevail." *Comm. Proposals*, vol. VII at 1578.

a home rule unit, nor did it concern any ordinances enacted pursuant to authority granted by the legislature. It did not relate to any overlapping jurisdictional problems short of an actual "conflict" between ordinances.²⁵⁷

Within those limitations, the provision was definite. Any municipal ordinance, whether enacted by a home rule municipality or not, prevailed over the home rule county's ordinance. Thus a home rule county could not use its vast powers to usurp the functions of non-home rule units, such as small towns or villages. A conflicting ordinance passed by a unit's board would be sufficient to negate the effect of the county ordinance within the unit's corporate limits.

Although there were no minority reports or dissents to the committee's § 3.3,²⁵⁸ First Reading was controversial.²⁵⁹ Traditionally, Illinois municipalities possessed many extraterritorial powers which had been granted them by statute. Some delegates, particularly Delegate Elward, feared that a home rule county might use its new home rule powers to vitiate the extraterritorial powers of the municipalities in that county. As an example, Elward cited the long-standing regulations on dairy plant inspections.²⁶⁰ He sought to amend § 3.3 to insure that a municipal ordinance exercised extraterritorially would prevail over a conflicting home rule county ordinance. The Section was adopted on First Reading with the phrase "within the corporate limits of the municipality" having been deleted after three time-consuming attempts to solve what was essentially a transition problem.²⁶¹

The SDS redraft stated that the municipal ordinance would prevail "within its jurisdiction." There is no explanation for this obviously substantive change, although it is clear that "within

257. *Id.* at 1602, 1646-50. The report does not define "conflict."

258. The vote was 15-0 in committee, *id.* at 1851.

259. *Verbatim Transcripts*, vol. IV at 3119-25, 3139-40, 3360.

260. *Id.* at 3074-75. See also the discussion of the Gertz-Elward amendment on this problem in note 235 *supra* and *Verbatim Transcripts*, vol. IV at 3072-75.

261. *Verbatim Transcripts*, vol. IV at 3360. Delegate Elward offered Amend. No. 14 which would have added "or without" after "within." *Id.* at 3119-21. It was debated and withdrawn after Chairman Parkhurst suggested that a better solution would be to delete "within the corporate limits of the municipality." *Id.* at 3360. Amend. No. 15, offered by Parkhurst and Elward, embodied that suggestion and was adopted by a hand vote of 57-15. *Id.* at 3121-25. Later the same day, July 24, 1970, Elward offered an additional subsection, 3.6, which read:

Any valid statutes authorizing any county or municipality to exercise any power or perform any function within or without its corporate limits in effect on the date of the adoption of this article shall continue in effect until otherwise provided by law.

Id. at 3139. He withdrew it upon receiving assurances from Parkhurst that they would work something out on the problem before Second Reading.

its jurisdiction" allows the exercise of extraterritorial powers, while "within the corporate limits of the municipality" does not.²⁶² On Second Reading, the convention did not debate the "conflicts" subsection²⁶³ and adopted it as part of the entire article.²⁶⁴ After Second Reading, SDS made no significant changes in the subsection,²⁶⁵ and it was adopted on Third Reading.²⁶⁶

—————*Subsection 6(d)—Prohibited Powers*—————

Subsection 6(d) lists the two powers which not even the General Assembly can grant to home rule units: that of extending a debt beyond forty years²⁶⁷ and that of defining and punishing a felony. The committee report did not specifically state why the committee decided that the 1870 Constitution's twenty-year limit on general obligation debt²⁶⁸ should be extended to forty years from the time it was incurred.²⁶⁹

On First Reading it became clear that the committee had decided to extend the twenty-year limit to forty years because it thought that capital improvements could be financed more cheaply by debt amortized over a longer time and that the length of debt service should approximate the useful life of the improvement.²⁷⁰ The debate centered on whether the provision affected only debt payable from ad valorem property tax receipts or other kinds of debt as well, and on whether the General Assembly could establish by statute time limits shorter than forty years.²⁷¹ The convention accepted Chairman Parkhurst's statement that the phrase "within forty years" meant that the General Assembly could establish shorter limits by statute²⁷²

262. *Comm. Proposals*, vol. VII at 1958, 1972, 1988.

263. Now renumbered as § 8(d).

264. *Verbatim Transcripts*, vol. V at 4208.

265. *Comm. Proposals*, vol. VII at 2473, 2559-60.

266. *Verbatim Transcripts*, vol. V at 4528. Neither the Official Explanation of § 6, *Comm. Proposals*, vol. VII at 2728, nor the Address to the People, *id.* at 2675, refers to § 6(c).

267. Section 4.8 of the Local Government Committee Report stated: "All units of local governments and all school districts shall pay any debt within 40 years from the time it is incurred." *Id.* at 1581. Section 4 of the committee report dealt with *all* local governments, where § 3 dealt only with home rule units.

268. ILL. CONST. art. IX, § 12 (1870). General obligation bonds are usually secured by a lien on ad valorem property taxes.

269. *Comm. Proposals*, vol. VII at 1680-88. There were no dissents or minority reports. The committee vote was 12-1 with 1 pass and 1 absent, *id.* at 1851.

270. *Verbatim Transcripts*, vol. IV at 3218-20.

271. *Id.* at 3218-20, 3386-92.

272. The convention rejected an amendment intended to clarify that language; see Parkhurst's remarks, *id.* at 3218-19; Amend. No. 24 (Mathias) was debated, *id.* at 3386-88, 3390 and defeated by a vote of 37-41.

and adopted Parkhurst's amendment to limit the provision to debt payable from ad valorem property tax receipts.²⁷³

SDS made no changes when it rearranged the article after First Reading²⁷⁴ and it was adopted without debate on Second Reading.²⁷⁵ There were no changes except renumbering after Second Reading²⁷⁶ and the section was finally adopted without debate on Third Reading.²⁷⁷

Section 3.4 of the Local Government Committee Report prohibited all units of local government, including home rule units, from defining and providing for the punishment of a felony.²⁷⁸ The committee report indicated that the purpose of this subsection was to make it clear that the major crimes were a statewide responsibility of such importance that no local diversity could be tolerated.²⁷⁹ The section was not controversial and there were no minority reports or dissents.²⁸⁰

On First Reading,²⁸¹ however, several delegates, particularly Bernard Weisberg, suggested that the committee proposal would allow home rule units to create crimes which, as long as they were not called felonies, could be punished just as severely as felonies. Weisberg offered an amendment which would have forbidden home rule units to define any type of crime, including misdemeanors, or to punish except by "reasonable fines," unless the General Assembly allowed them to do so by general law.²⁸²

Proponents of home rule argued that the Weisberg amendment would strip home rule units of the power to enact police power measures, such as gun control or pollution ordinances.²⁸³ Weisberg argued that any existing statutory authority would be

273. *Id.* at 3388-90; Amend. No. 26 (Sommerschild) would have extended the provision to all kinds of debt and was defeated by voice vote, *id.* at 3391-92. The subsection was adopted by a vote of 59-7, *id.* at 3392.

274. *Comm. Proposals*, vol. VII at 1959, 1972, 1988, 1991; it was renumbered as § 8(d) (3).

275. *Verbatim Transcripts*, vol. V at 4207-08.

276. *Comm. Proposals*, vol. VII at 2474, 2560, 2604.

277. *Verbatim Transcripts*, vol. V at 4528. Neither the Official Explanation, *Comm. Proposals*, vol. VII at 2727-28, nor the Address to the People, *id.* at 2675, mentions the forty year debt limit.

278. Section 3.4 of the Local Government Committee Report stated: "The power granted by paragraph 3.1(a) to units of local government shall not include the power to define and provide for the punishment of a felony." *Comm. Proposals*, vol. VII at 1579.

279. *Id.* at 1650-51.

280. The committee vote was 14-0 with 1 absent, *id.* at 1851.

281. *Verbatim Transcripts*, vol. IV at 3026, 3125-38, 3360-61.

282. Amend. No. 16, in final form, would have substituted the following subsection:

3.4. Units of local government shall not, except as provided by general law, exercise any judicial power or function, or define any crime, or provide for the punishment of any offense other than by reasonable fines for violations of local ordinances.

Id. at 3127.

283. See remarks of Delegate Elward, *id.* at 3130-31.

unaffected by his amendment.²⁸⁴ After a confusing debate, the convention rejected the Weisberg amendment.²⁸⁵ Later on First Reading, Chairman Parkhurst sought to resolve the lingering dispute by adding "or to punish by imprisonment for more than six months, except as provided by law" at the end of the committee proposal.²⁸⁶ Parkhurst stated that the Local Government committee had never intended the administration of justice to be a home rule power under § 3.1(a). He thought that under his amendment the legislature could still enact laws, including laws with reasonable classifications of municipal powers, which would grant to home rule units powers in the criminal law field.²⁸⁷ Following a brief debate, the convention adopted the amendment.²⁸⁸

SDS made no significant changes in the provision when it redrafted the article after First Reading²⁸⁹ and it was adopted without debate on Second Reading.²⁹⁰ There were no major changes, other than rearrangement of the subsection, after Second Reading²⁹¹ and the subsection was adopted as part of the final article on Third Reading.²⁹²

—————*Subsection 6(e)—Powers Prohibited Unless They Are Granted by the General Assembly*

Subsection 6(e) lists the five powers which home rule units cannot exercise unless the General Assembly passes legislation enabling them to exercise the power: imposing a prison sentence for more than six months, licensing for revenue, taxing income, taxing earnings and taxing occupations. These powers are specific exceptions to the general grant of home rule powers in § 6(a). The convention divided them into two general categories: (1) the imprisonment power and (2) the revenue power. The latter consists of licensing for revenue and taxation upon or measured by income, earnings or occupations.

This power is closely related to the power "to define and provide for the punishment of a felony" prohibited by §

284. *Id.* at 3131.

285. *Id.* at 3137-38; the vote was 26-75 with 6 passes.

286. *Id.* at 3360.

287. *Id.* at 3360-61.

288. *Id.* at 3361.

289. *Comm. Proposals*, vol. VII at 1958, 1972, 1988, 1991; renumbered as § 8(d) (1).

290. See note 275 *supra*.

291. *Comm. Proposals*, vol. VII at 2474, 2560, 2604.

292. *Verbatim Transcripts*, vol. V at 4247 (explanation by Chairman Whalen of SDS) and 4528. The Official Explanation states in part: "Subsections (d) and (e) contain a list of what a home rule unit may not do, such as . . . punish felons." *Comm. Proposals*, vol. VII at 2728; but see discussion of the relationship to the imprisonment provision, § 6(e)(1) *infra*. The Address to the People does not mention definition and prohibition of a felony, *Comm. Proposals*, vol. VII at 2675.

6(d)(2).²⁹³ Neither the majority nor minority committee report advocated making the power to imprison for more than six months a home rule power. The committee report to § 6(d)(2) on the definition and punishment of felonies mentioned that current Illinois law allowed municipalities to impose a jail sentence only for non-payment of fines and, even then, only for a term of six months or less.²⁹⁴ The committee thought that their proposal excluding the definition and punishment of felonies from home rule powers prohibited home rule units from prescribing prison terms exceeding one year.²⁹⁵

The prohibition of imprisonment for more than six months arose from the First Reading debate on the felonies provision.²⁹⁶ The convention had rejected Delegate Weisberg's amendment which prohibited home rule units from punishing any violation of local ordinances except by "reasonable fines."²⁹⁷ The convention tentatively accepted the settlement offered by Chairman Parkhurst by adding to the prohibition of defining and punishing felonies the phrase "or to punish by imprisonment for more than six months as provided by law."²⁹⁸

SDS placed the imprisonment provision with the felony provision when it redrafted the article after First Reading,²⁹⁹ and it was adopted without debate on Second Reading.³⁰⁰ In writing its second redraft of the article, SDS noticed that placing the imprisonment provision with the prohibition of defining and punishing felonies created an ambiguity. The combined provision forbade a home rule unit to "define and provide for the punishment of a felony" or to "punish by imprisonment for more than six months, except as provided." This raised the question whether the prohibition on defining and punishing felonies was indeed absolute or whether the General Assembly could grant home rule units the power to define and punish felonies, as well as the power to imprison for more than six months. To make it clear that the power to define and punish felonies could never be granted by the legislature, SDS separated that provision from the one on imprisonment and placed it with the debt limit prohibition in § 6(d). It then placed the imprisonment provision

293. See remarks of Delegate Gertz, *Verbatim Transcripts*, vol. IV at 3126.

294. *Comm. Proposals*, vol. VII at 1651.

295. *Id.* at 1650.

296. See text accompanying notes 278-88 *supra*, for a full discussion.

297. *Verbatim Transcripts*, vol. IV at 3127.

298. *Id.* at 3361.

299. See note 289 *supra*.

300. See note 275 *supra*.

with the specific revenue provisions in § 6(e), making it clear that the § 6(e) powers could be granted by the legislature.³⁰¹ There was no debate on the separation of the provisions and § 6(e)(1) was adopted as part of the final article on Third Reading.³⁰²

All four of these powers have the potential of raising great amounts of revenue and of engendering great abuses. A license imposed on an activity to raise revenue, as opposed to regulating it for health, safety, morals and welfare, is essentially a tax upon that activity. By requiring licenses for only a few activities, such as door-to-door soliciting or selling liquor, a government may require people engaged in certain businesses to pay an undue share of taxes. A slight shift in the phrasing of a revenue license statute may transform it into an occupation tax, the technical name for the Illinois sales tax. Another slight shift in the phrasing of an occupation tax may transform it into a tax on earnings—often called a “payroll tax”—or an income tax. The Illinois income tax is technically a privilege tax measured by income.

Difficult as it is to distinguish these revenue measures from each other, it is equally hard to distinguish them from the traditional consumption and privilege taxes allowed under the grant of home rule power in § 6(a). It may be argued that the economic incidence of a tax on the sale of goods at retail is identical to that of a retailers’ occupation tax or that a tax on the privilege of hiring employees is functionally identical to an occupation tax on an employer, if both taxes are measured by the number of his employees. However, the sales tax and privilege tax are valid under the home rule taxing powers, but the occupation taxes are not.

Because the delegates knew of the antipathy in the business community toward occupation taxes and licensing for revenue and the general animosity toward income and earnings taxes, these provisions generated great controversy. Aside from the home rule preemption dispute, these taxes were the most heatedly debated issue of the Local Government article.³⁰³ Although often discussed together, the four taxes are easier to understand if licensing for revenue is analyzed separately from the other three.

The majority of the Local Government committee favored prohibiting all units of local government, including home rule

301. *Comm. Proposals*, vol. VII at 2474, 2560, 2604.

302. *Verbatim Transcripts*, vol. V at 4247 (explanation by Delegate Whalen of SDS) and 4528. Neither the Official Explanation, *Comm. Proposals*, vol. VII at 2727-28, nor the Address to the People, *id.* at 2675, mentions the power to imprison for more than six months.

303. See Anderson, *supra* note 41, at 44.

units, from licensing for revenue purposes unless the General Assembly enabled them to do so.³⁰⁴ A license for revenue differs from a license for regulation in the nature of the fee charged. If the government exacts from the licensee no fee, or only a fee which is reasonably related to the cost of administering the licensing law, then the license is one for regulation. If the fee exceeds the cost of administering the licensing law, the license is one for revenue. The majority decided that a revenue license was really an "incident to the power to tax" and should be treated in the same manner as an occupation tax.³⁰⁵

The six-member minority disagreed. Their minority proposal granted all municipalities the specific power "to license for revenue and for regulation."³⁰⁶ The minority contended that revenue licensing was an easily-administered and widely-used means of raising municipal revenue³⁰⁷ and maintained that Illinois case law had demonstrated the practical difficulty of ascertaining whether a license was for regulation or for revenue.³⁰⁸ The minority concluded that the history of municipal licensing showed that revenue licensing lent itself to no more abuses than regulatory licensing.³⁰⁹

On First Reading,³¹⁰ the convention rejected attempts to allow some home rule revenue licensing power. The first of the three amendments considered was Delegate Keegan's motion to delete entirely the prohibition on licensing for revenue without legislative authorization. She argued that a local government could be trusted to impose revenue licensing only after a thorough consideration of the financial situation of its community and that those Illinois municipalities which claimed to be licensing for revenue actually imposed no higher fees than those which claimed to be licensing for regulation.³¹¹ The brief but spirited debate shows that the delegates were confused about the precise status of revenue licensing in Illinois. Apparently

304. The majority proposal read: "Units of local government shall not license for revenue purposes except as authorized by general law." *Comm. Proposals*, vol. VII at 1580.

305. *Id.* at 1675.

306. Delegates Carey, Brown, Daley, Johnsen, Keegan and Stahl signed Minority Proposal 1C, *id.* at 1865-79. Delegate Keegan submitted a separate dissent arguing that the majority proposal placed an undue restriction on home rule units' ability to raise revenue. Delegate Dunn dissented because he thought the revenue licensing power should be granted only by a three-fifths vote in each house of the legislature, *id.* at 1787. The committee vote was 8-4 with 1 pass and 2 absent, *id.* at 1851.

307. *Id.* at 1874-75.

308. *Id.* at 1875-79.

309. *Id.* at 1878-79.

310. *Verbatim Transcripts*, vol. IV at 3151-55, 3187-99, 3283, 3304-14, 3371-74.

311. *Id.* at 3192-93.

many delegates were willing to trust the courts and legislature to correct any abuses of local licensing³¹² and the motion to delete the prohibition on revenue licensing carried.³¹³

Evidently some delegates regretted their action, because the vote on the Keegan amendment was reconsidered when the convention resumed the following week.³¹⁴ Keegan, presenting the amendment a second time, offered the argument that many Illinois cities in fact already issued licenses for revenue, especially liquor licenses, and that their record had shown few abuses and many benefits.³¹⁵ The convention agreed that revenue licensing might provide a suitable alternative to local property taxation but decided that the opportunity for abuse was too great to warrant the risk. It reinstated the prohibition.³¹⁶

Vice-Chairman Carey then offered an amendment to allow municipalities "with a population of an excess of 50,000" to license for revenue.³¹⁷ However, the convention had decided that revenue licensing was one power which could not be safely granted to municipalities, even large ones, without prior legislative authorization and defeated the proposal.³¹⁸ The prohibition on revenue licensing was adopted on First Reading exactly as the majority had proposed it.³¹⁹

When SDS redrafted the Local Government article after First Reading, it made no changes in present § 6(e) (2) other than combining licensing for revenue with the three prohibited taxes and placing them in a section on powers of home rule units.³²⁰ On Second Reading Keegan made the last attempt to allow licensing for revenue. She limited her amendment to home rule units. The main point of her argument was that home rule units might well need licensing as a revenue source in the future, even though they might not need it presently. However, the convention rejected her argument without debate.³²¹ The provision was adopted without further discussion as part of the home rule section of the entire article on Second Reading.³²² SDS made

312. *Id.* at 3193-99.

313. *Id.* at 3199 by a vote of 56-37 with 2 passes.

314. Delegate Fay made the motion to reconsider, *id.* at 3283, 3304; the convention adopted his motion, *id.* at 3305-06.

315. *Id.* at 3306.

316. *Id.* at 3306-14.

317. *Id.* at 3371-74.

318. *Id.* at 3374 by a vote of 40-63 with 3 passes.

319. *Id.* by a vote of 73-3.

320. See note 289 *supra*; the combined provision was numbered § 8(d) (2) throughout Second Reading.

321. *Verbatim Transcripts*, vol. V at 4163-69. Amend. No. 3 to § 8(d) (2) was defeated 39-54. The only other amendment affecting licensing for revenue was Amend. No. 11 (Whalen), which corrected a technical error in SDS Report No. 13; it was adopted by voice vote, *id.* at 4186-88.

322. *Id.* at 4208; the vote was 84-4.

no changes other than renumbering the section in its second redraft³²³ and it was adopted as part of the final article on Third Reading.³²⁴

These three taxes form the basis of the Illinois income tax which is actually a privilege tax measured by income, a large portion of which is earnings, and the Illinois sales tax which is actually a retailers' and servicemen's occupation tax. Thus, the major issue was whether the constitution, as opposed to the legislature, should grant home rule units the power to impose the two major tax components of the state revenue base. At the time the convention met, the state income tax was only a few months old and many observers thought it would become one of the most controversial political issues in the 1970 and 1972 campaigns for the General Assembly and the 1972 gubernatorial campaign.³²⁵ Many delegates undoubtedly feared that a constitution allowing local governments, even home rule units, the power to impose an income tax would not pass.

The majority of the Local Government committee advocated denying the power to impose taxes on or measured by income, earnings or occupations to all units of local government, including home rule units, without prior legislative authorization.³²⁶ The seven Democrats submitted a minority proposal deleting the provision.³²⁷

On First Reading the convention had two overriding concerns: (1) whether units of local government, especially home

323. *Comm. Proposals*, vol. VII at 2474, 2560, 2604; renumbered as § 6(e).

324. *Verbatim Transcripts*, vol. V at 4527-28. The Address to the People does not mention licensing for revenue, *Comm. Proposals*, vol. VII at 2675, but the Official Explanation of § 6 mentions "license for revenue" in the list of what a home rule unit may not do, *id.* at 2728.

325. It is generally agreed that the income tax issue was indeed an important factor in both years, usually to the detriment of those officeholders who had supported it.

326. Section 4.4 of the majority report read: "Units of local government shall not impose taxes based upon or measured by income, earnings, or occupation except as authorized by general law." *Comm. Proposals*, vol. VII at 1579-80.

327. Delegates Carey, Brown, Daley, Johnsen, Keegan, Peterson and Stahl signed Minority Proposal 1H, *Comm. Proposals*, vol. VII at 1913. Keegan also submitted a dissent advocating deletion of § 4.4 for essentially the same reasons that she favored deletion of the prohibition on licensing for revenue, *id.* at 1783-86. On the other side, four members of the majority filed two dissents because they considered the majority proposal too liberal. Delegate Dunn thought any bill enabling local governments to use these taxing powers ought to be passed by at least three-fifths of each house, *id.* at 1787. Delegates Borek, Butler and Zeglis thought that these taxes should be imposed only after approval at a local referendum, as well as after passage or an enabling act, *id.* at 1782. The committee vote was 9-4 with two absent, *id.* at 1851. The minority insisted that, while it did not favor imposition of municipal income taxes, it did not want to limit the revenue options of local governments, especially home rule units, which might need these revenue sources in the future. *Id.* at 1915.

rule units, really needed to find new sources of revenue; and (2) whether these three taxes were such a viable revenue source that the local governments should be given the power to utilize them without prior legislative authorization.³²⁸ The lengthy debate shows that the delegates were aware that their decision to abolish the ad valorem personal property tax the month before³²⁹ had increased the pressure to allow local governments to use new sources of revenue. The debate also shows that the delegates were aware that the occupation tax was functionally similar to revenue licensing³³⁰ and to an income tax.³³¹

The convention considered eight amendments offered to § 4.4 and rejected all but a technical suggestion offered by Chairman Parkhurst.³³² The amendments fell into two broad categories: four amendments to allow some form of local occupation, income or earnings taxes, and three amendments to restrict local imposition of such taxes.

Delegate Meek made an impassioned plea to delete the ban on an occupation tax, which he said the large cities needed to support the services they provided to their residents and to the suburbanites who benefited from the cities. Although the delegates were impressed by such an argument by a suburban Republican long affiliated with business, they rejected his amendment.³³³ They also rejected Delegate Kenney's amendment to allow local governments the power to levy a 1% income tax without prior legislative authorization. In spite of the apparent assumption by the delegates, including the sponsor, that the amendment covered only home rule units, the proposal was defeated.³³⁴

Meek later offered an amendment authorizing a local occupation tax supplementary to the state retailer's and servicemen's occupation taxes, thus allowing a form of local sales taxes. He withdrew it when he saw that the delegates from Chicago, presumably the chief beneficiary of the tax, would not support it.³³⁵ Delegate Lawlor then called for a vote on an identical amendment, which failed by a wide margin.³³⁶

328. First Reading of § 4.4 is found at *Verbatim Transcripts*, vol. IV at 3091-93, 3150-80, 3184-87, 3191, 3196, 3365-71.

329. *Id.*, vol. III at 2061-66. The vote was taken on June 25, 1970.

330. See remarks of Delegates Borek, McCracken and Woods, *id.*, vol. IV at 3151-52.

331. See remarks of Delegates Borek, Mullen and Parkhurst, *id.* at 3152-53.

332. Amend. No. 17 to § 4.4, *id.* at 3368-69.

333. Amend. No. 4 to § 4.4, *id.* at 3157-71.

334. Amend. No. 8 to § 4.4, *id.* at 3179-81, 3184-87; defeated 23-62, *id.* at 3187.

335. Amend. No. 16, *id.* at 3187, 3365-68; withdrawn, *id.* at 3367.

336. Amend. No. 18, *id.* at 3369-71; defeated 26-49, *id.* at 3371. It is not clear from the debates why the Chicago delegation failed to support the amendment.

The convention also rejected an attempt to prohibit all the taxes and two attempts to make it more difficult for a local government to impose the taxes. Delegate Friedrich failed both in his attempt to ban the three taxes absolutely³³⁷ and in his attempt to require local referendum approval before any of the taxes could be imposed.³³⁸ Not surprisingly, the convention also rejected Delegate Butler's amendment to require both local referendum and legislative approval before any of the taxes could be imposed.³³⁹

By the end of First Reading it was clear that the convention did not want to grant the constitutional power to impose any of the three controversial taxes or to issue licenses for revenue to any local government, even a home rule unit. This feeling was probably based upon the combined fear that local government would not use the powers properly and that the grants of such powers would prove so unpopular with the electorate that the voters would reject the proposed constitution.

After First Reading,³⁴⁰ SDS made no changes in § 4.4 except to combine it with the revenue licensing ban (§ 4.5) in a renumbered provision.³⁴¹ On Second Reading, Elward sought to delete the ban on occupation taxes as far as home rule units were concerned, but the convention defeated the amendment.³⁴² SDS again made no changes in the provision, other than renumbering,³⁴³ and it was adopted as part of the final article on Third Reading.³⁴⁴

In the end, the committee's decision to require legislative authorization before home rule units could impose the taxes withstood attacks from all sides. Since the convention met at a time when public animosity to taxes was beginning to reach a peak, the delegates decided not to risk the almost certain rejection of their constitution by an electorate which was not

337. Amend. No. 5, *id.* at 3172-73; defeated 10-61, *id.* at 3173.

338. Amend. No. 6, *id.* at 3173-75; defeated by voice vote, *id.* at 3175. Delegate A. Lennon's amendment to the Friedrich amendment to limit its applicability to municipalities and counties also failed, *id.* at 3174-75.

339. Amend. No. 7, *id.* at 3175-79; defeated 29-69 with 2 passes, *id.* at 3179.

340. Section 4.4 was advanced to SDS by a vote of 61-7, *id.* at 3371.

341. *Comm. Proposals*, vol. VII at 1958, 1972, 1988, 1991; renumbered as § 8(d)(2).

342. Amend. No. 2 to § 8(d)(2), *Verbatim Transcripts*, vol. V at 4167-69; defeated 38-51.

343. *Comm. Proposals*, vol. III at 2474-75, 2560, 2564.

344. *Verbatim Transcripts*, vol. V at 4247, 4528. The Address to the People does not mention the power to impose taxes upon or measured by income, earnings or occupation, *Comm. Proposals*, vol. III at 2675, but the Official Explanation of § 6 includes the power to "impose income taxes, or tax occupations" in its list of powers which a home rule unit may not exercise without prior authorization of the General Assembly, *id.* at 2728.

convinced that the future needs of cities might require these sources of revenue. The decision to authorize these taxes, and the political risks attendant upon that judgment, now rest with the legislature to grant the authority and local governments to use that authority.

————Subsection 6(f)—Forms of Government and Officers

This provision delineates the power of a home rule unit to select its form of government from those established by the General Assembly, such as the mayor-council, city manager or commission forms.³⁴⁵ It also enables a home rule municipality to provide for its officers. This section originated in the deliberations of the Local Government committee. The committee proposal, § 4.3,³⁴⁶ allowed any county or municipality, not just home rule units, to choose by referendum one of the statutory forms of government and the types of officers it wanted.³⁴⁷

The committee report explained that the 1870 Constitution contained provisions restricting county organization,³⁴⁸ leaving municipal organization to legislative determination. The committee decided that both counties and municipalities should have more flexibility in shaping their forms of government and in selecting their officers.³⁴⁹ The phrase "form of government" included the powers and functions of the county board and, in the case of a home rule county, of the chief executive officer. It contemplated that the General Assembly would establish alternative patterns of county government from which each county could select one form of government at a referendum. Municipalities would continue to select a form of government provided by statute, as they had before.³⁵⁰

The provision giving the voters of a county or municipality "plenary control over the number, nature and duties of its officers"³⁵¹ was a clear expression of the committee's view that the powers to choose a form of government and to choose the

345. See generally ILL. REV. STAT. ch. 24, §§ 4, 5 and 6.

346. The committee vote on § 4.3 was 10-3 with 2 absent, *Comm. Proposals*, vol. VII at 1851. Although Delegates Carey, Peterson and Stahl voted no, and Delegates Brown and Daley were absent, none filed a dissent or minority report.

347. Section 4.3 stated:

Any unit of local general government may by referendum adopt, alter, and repeal alternative forms of government provided by general law, and it may by referendum provide for the number of its officers their terms of office, the manner of selecting them, and their powers and duties.

Comm. Proposals, vol. VII at 1579.

348. ILL. CONST. art. X, §§ 5, 6 and 7 (1870).

349. *Comm. Proposals*, vol. VII at 1665-66.

350. *Id.* at 1667.

351. *Id.*

officers of that government were intertwined. This was a departure from the 1870 Constitution, which specified the officers a county was required or permitted to have, and which left municipal officers to the determination of the legislature.³⁵² The referendum requirement is really a restriction on the powers of a home rule county, since otherwise the county board could provide for county officers.

There were no substantive changes in the proposal on First Reading.³⁵³ Delegate Keegan, speaking for the committee, presented the same arguments advanced in the report and emphasized that the officers and forms of government which a local government had were primarily a matter of local concern.³⁵⁴ When other delegates pointed out that the proposal contained ambiguities and conflicts with other sections of the proposed article,³⁵⁵ Keegan proposed an amendment designed to remove the drafting ambiguities and conflicts.³⁵⁶ The convention quickly adopted both the amendment and the amended section.³⁵⁷

When SDS placed all the powers of home rule units into § 8 after First Reading, it renumbered § 4.3³⁵⁸ and separated the power to choose officers into one provision on municipalities and another on counties. Municipalities were allowed to provide for officers by referendum, but counties could do so only per § 4, the provision on county officers.³⁵⁹ The change was not

352. *Id.* at 1667-69.

353. *Verbatim Transcripts*, vol. IV at 3025-26, 3148-50, 3253-54, 3286-91, 3363-65.

354. *Id.* at 3148-49.

355. Delegate Stahl pointed out that the grant of power to define officers' "powers and duties" conflicted, as far as counties were concerned, with §§ 7.2 and 7.4 [now §§ 4(d) and 4(a) respectively] of the majority report. He proposed Amend. No. 3 to § 4 to delete the "powers and duties" reference in § 4.3, but withdrew it when Chairman Parkhurst and Delegate Keegan agreed to work with him to clear up this problem, *id.* at 3149. Delegate Connor also pointed out that the meaning of "alter . . . alternative forms" was not clear and President Witwer suggested the problem was one SDS should handle, *id.* at 3149-50. Delegate Lewis suggested that § 4.3, allowing the number of officers to be set at a referendum, conflicted with then § 6.2 [present § 3(a)], which left the number of members of a county board to legislative determination. At President Witwer's suggestion, this discrepancy was left to future determination, *id.* at 3149-50.

356. Amend. No. 15 to § 4 contained the suggestion made by Delegates Stahl, Connor and Lewis, *id.* at 3363-64.

357. The amendment was adopted by a voice vote, *id.* at 3364 and the section by a vote of 69-2, *id.* at 3365.

358. In doing so, SDS inadvertently lost the provision on officers, *Comm. Proposals*, vol. VII at 1959, 1972, 1988. The error was rectified by an addendum to SDS Report No. 13, *Daily Journal*, vol. I at 626, and Chairman Whalen's Amend. No. 11 to § 8 at *Verbatim Transcripts*, vol. V at 4186-88, adopted by voice vote.

359. The redrafted portion of § 8(d) read:

(5) [E]xcept in the case of a home rule county, to provide for its officers, their manner of selection and terms of office, except by referendum; or (6) in the case of a home rule county, to provide for

controversial and newly renumbered sections were adopted as part of the full article on Second Reading.³⁶⁰

In its second redraft, SDS made no significant changes in the provision except to add "or as otherwise provided by law" to the sentence allowing home rule municipalities to choose their officers in order to make it clear that they, as well as non-home rule municipalities, could select officers authorized by law.³⁶¹ On Third Reading, the convention adopted Parkhurst's amendment to make it clear that a home rule county's power to change its officers by referendum did not include any power to change the membership and method of selection of the Cook County board—a highly political issue resolved in § 3.³⁶² With that, the section was adopted as part of the final article.³⁶³

————Subsections 6(g), (h) and (i)—Preemption by the General Assembly

Subsections (g), (h) and (i) of § 6 establish the means by which the General Assembly may "preempt" a home rule power, i.e., remove a power from home rule units entirely, limit a home rule power, declare a power to be exclusively a state power or declare that both the state and home rule units may exercise a power concurrently. Although the convention almost unanimously wished to grant more powers to some local governments, even the most ardent advocates of home rule believed that the legislature should retain the power to determine matters of exclusively state-wide concern and to remove from home rule units any powers which the legislature felt the units were abusing.³⁶⁴ The controversy was over how such powers should be preempted.

The Committee on Local Government studied the literature on home rule³⁶⁵ and attempted to fashion its majority and

its officers, their manner of selection and terms of office, except as provided in § 4.

Daily Journal, vol. I at 626.

360. *Verbatim Transcripts*, vol. V at 4207-08. Delegate Alexander proposed and withdrew an amendment on the structure of the Chicago city council. Apparently it was not a serious effort. *Id.* at 4189-90.

361. *Comm. Proposals*, vol. VII at 2475, 2561, 2604.

362. Amend. No. 4 to Art. VII, *Verbatim Transcripts*, vol. V at 4447-49, adopted by voice vote, *id.* at 4449.

363. *Id.*, vol. V at 4527-28. The Address to the People states: "Home rule units may exercise much discretion in regard to their governmental structures and offices." *Comm. Proposals*, vol. VII at 2675. It is not mentioned in the Official Explanation of § 6, *id.* at 2725-26.

364. See, e.g., *Member Proposal No. 144* (Zeglis) prepared by the Illinois Municipal League, *Comm. Proposals*, vol. VII at 2909. The discussion of preemption which follows is partly based upon A. Lousin, "Home Rule Preemption—The Illinois Experience So Far," (unpublished essay submitted to the 1975 Lincoln Essay Contest of the Ill. St. Bar Assoc. (1974)).

365. *Comm. Proposals*, vol. VII at 1637-46.

minority solutions within the framework of Illinois political realities. The majority concluded that the legislature generally should be able to preempt by only a majority vote in each house, but that the denial or limitation of a tax power or a power which the state did not exercise itself should require a three-fifths vote in each house. It also suggested that the legislature should be able to "provide standards and procedures" for the exercise of home rule powers.³⁶⁶

The six-member minority agreed that the legislature should be able to preempt a tax power or a power that the state did not wish to exercise itself only by approval of three-fifths of each house.³⁶⁷ However, it contended that this extraordinary majority requirement was necessary to prevent emasculation of home rule by a legislature which simply wanted to declare a home rule power to be exclusively a state power³⁶⁸ or to declare that a home rule power could be exercised only concurrently with the state.³⁶⁹ The minority thought that both the "exclusive exercise" and "concurrent exercise" provision were a means of circumventing the three-fifths majority requirement to deny or limit a power. Conceivably, if an ordinary majority of the legislature objected to some Chicago home rule regulatory ordinances, it could enact a comprehensive list of new regulatory

366. *Id.* at 1578, 1637-46. The proposal to § 3.2 read:

(a) The General Assembly may limit or deny the power to tax, and any other power or function granted by paragraph 3.1(a) which the State does not exercise or perform, only by general laws which are approved by three-fifths of the membership of each house elected and serving.

(b) The General Assembly may provide by general law for the exercise of any power or function by the State. When such a law specifically provides that the power or function may be exercised exclusively by the State, units of local government shall not exercise it.

(c) Units of local government may exercise and perform concurrently with the State any power or function granted by paragraph 3.1(a) which is not declared to be exclusive, subject to limitation provided by law.

(d) The General Assembly may by general law provide standards and procedures for the exercise of powers and performance of functions granted by paragraph 3.1(a).

Id. at 1578.

367. *Id.* at 1883. The committee voted jointly on § 3.1, the grant of power, and § 3.2, legislative preemption. The vote was 8-4 with 3 absent, *id.* at 1851. Delegates Brown, Carey, Daley, Johnsen, Keegan and Stahl submitted Minority Proposals 1D, 1E and 1G on preemption, all discussed in the text accompanying notes 368-70 *infra*. Keegan also submitted a separate statement to the minority package arguing that the majority's proposal was "basically deceptive" because its preemption section allowed the General Assembly to restrict "even to the point of absolute denial" the home rule powers established in the grant of power. *Id.* at 1890-91. On the other side, Butler dissented to § 3.2(a) because he thought the three-fifths vote would be impossible to muster in the foreseeable future and that consequently no home rule power could ever be denied or limited. *Id.* at 1781.

368. Minority Proposal 1D, *id.* at 1881-89.

369. Minority Proposal 1E, *id.* at 1893-96.

statutes and immediately declare those powers exclusive to the state. This would eliminate the need to obtain a three-fifths majority in order to "deny or limit" the regulatory power as exercised by Chicago. This possibility of "two-step preemption" by just over half the legislature was a favorite nightmare for advocates of strong home rule.³⁷⁰

The minority was especially vociferous in its objections to the "standards and procedures" provision, which it considered "both an unnecessary and potentially dangerous constitutional provision." It thought that the legislature could abuse this power to establish stringent "procedural guidelines" for the exercise of home rule power, thereby rendering home rule meaningless.³⁷¹

Eventually the convention supported the majority's preemption package except for the "standards and procedures" section, which it deleted as the minority had suggested. The major battles on preemption occurred on First Reading. Of the eleven amendments offered to Majority Proposal § 3.2, two were essentially stylistic and were quickly accepted.³⁷² The nine substantive amendments were considered over a six-day period. It must be remembered that for most of the preemption debate the delegates thought of "home rule" as a power which every municipality in Illinois, no matter how small, would be given automatically.³⁷³ Thus, on First Reading the delegates thought they were considering preemption of powers of virtually *all* cities, not just the larger ones. The only successful substantive amendment was the motion to delete the "standards and procedures provision" of § 3.2(d) of the Majority Report.³⁷⁴ After it was adopted, the convention resisted all attempts to change the other controversial proposal—the establishment of different vote requirements for different kinds of preemption. To thoroughly understand the process, the amendments should be examined in approximately chronological order.

Delegate Butler offered the first amendment, which would have allowed denial or limitation of a home rule power by an ordinary majority of each house. He argued that the ordinary

370. A Lousin, "Home Rule Preemption—The Illinois Experience So Far," 3 (unpublished essay submitted to the 1975 Lincoln Essay Contest of the Ill. St. Bar Assoc. (1974)).

371. Minority Proposal 1G, *Comm. Proposals*, vol. VII at 1907-11.

372. Amend. No. 11 to § 3.2 (McCracken) which clarified § 3.2(b), accepted, *Verbatim Transcripts*, vol. IV at 3108, Amend. No. 26 to § 3.2 (Parkhurst), which clarified § 3.2(c), accepted, *id.* at 3358.

373. The substantive amendments were considered from July 23-29, *id.* at 3086-352. The convention had eliminated a population threshold shortly before, *id.* at 3070 (July 23, 1970), and did not instate a 10,000 population threshold until *id.* at 3324 (July 23, 1970), just before consideration of the preemption ended.

374. Amend. No. 13 (Stahl) to § 3.2, *id.* at 3112-19.

majority requirement extended adequate protection against hasty preemption. Many delegates, however, thought that if the cities, especially Chicago, were to have meaningful home rule, they should have the protection of a three-fifths requirement for denial or limitation of a home rule power.³⁷⁵ The Butler amendment was defeated and that issue was settled for First Reading.³⁷⁶

Delegate Carey then offered an amendment to strike the words "which the State does not exercise or perform" from the majority's § 3.2(a). This would have prevented the legislature from denying or limiting a power to home rule units, whether it exercised the power or not, unless three-fifths of each house approved. After a confusing and emotional debate,³⁷⁷ the convention rejected Carey's argument that experience in other states had shown the necessity for great protection against legislative preemption, even when the power preempted was one exercised by the state.³⁷⁸ Apparently they feared that, without retention by the legislature of the power to deny local governments authority to exercise a power already being exercised by the state, the home rule units would be virtual city-states and that, as Chairman Parkhurst predicted, Illinois would become a feudal society with no strong central government.³⁷⁹ The amendment was defeated.³⁸⁰

When Delegate Carey offered the amendment again, the debate was brief but illuminating. One of the crucial issues of Illinois home rule is the distinction between when a preemption bill requires a three-fifths vote [§ 6(g)] and when it requires an ordinary majority vote [§§ 6(h) and (i)]. The transcript of the dialogue between Chairman Parkhurst and Vice-Chairman Carey on this amendment summarizes the problems and arguments involved in this complicated but vital issue.³⁸¹ Carey withdrew his amendment pending settlement of the extraordinary majority question.³⁸²

375. See remarks of Delegate Gertz, *id.* at 3087; see also former Senator Bottino's remarks on the operation of the legislature, *id.* at 3087-88.

376. Amend. No. 9 (Butler) was defeated 29-64, *id.* at 3086-89.

377. Carey's original Amend. No. 10 amended both §§ 3.2(a) and (b), but he withdrew the latter part almost immediately, *id.* at 3089. Delegate Thompson persuaded Carey to change "three-fifths of those elected" to "three-fifths of those elected and serving," Amend. No. 1 to Amend. No. 9 to § 3; accepted, *id.* at 3093. The debate on the first parties of the amendment is at *id.* at 3089-3105.

378. See *id.* at 3089-90.

379. See *id.* at 3096-97.

380. The vote was 42-61-6, *id.* at 3105.

381. *Id.* at 3326-28. The colloquy on Amend. No. 21 to § 3 (Carey), is of paramount importance to any litigation on preemption.

382. *Id.* at 3328.

Another important exchange is the debate on Carey's amendment to strike "subject to limitation provided by law" in present § 6(i)³⁸³ and on Delegate Stahl's amendment to delete § 3.2(d) on "standards and procedures."³⁸⁴ The second amendment was considered immediately after the first and the questions and answers on one often refer to the other. The debate is indispensable to any understanding of how the final preemption sections function together and particularly how a conflict between state-wide standards and local diversity may be reconciled.

One of the trenchant questions of home rule was how the legislature could establish standards for matters so important to the state as a whole that no local diversity could be tolerated, and at the same time allow the home rule units to establish other and perhaps higher standards to augment those of the state. Carey argued that a legislature which could limit home rule units' exercise of concurrent powers by majority vote could also eliminate that exercise of concurrent powers by majority vote.³⁸⁵

Chairman Parkhurst responded that if the concurrent exercise provision was *not* "subject to limitation provided by law," then the legislature could *not* establish a "definition" or "standard" or "uniformity" in the exercise of that concurrent power by a home rule unit.³⁸⁶ His prime example was an air pollution control act which established state-wide clean air standards to be enforced by local officers. Parkhurst argued that unless the legislature could limit the exercise of concurrent jurisdiction, the legislature could not delegate to Chicago's pollution inspectors the authority to enforce state-wide standards. It would either have to declare inspection for air pollution an exclusive state function under § 6(h), thereby eliminating Chicago's power to establish and enforce air pollution standards, or have to allow Chicago plenary power to exercise concurrent jurisdiction over air pollution, thus relieving Chicago of any obligation to observe or enforce state standards. This argument apparently convinced Carey and he withdrew his motion.³⁸⁷

Immediately thereafter the convention considered Delegate Stahl's motion to delete § 3.2(d) on "standards and procedures." This was the only successful attempt to amend the substance of the majority's preemption package. Delegate Stahl argued that the majority report to the exclusive and concurrent exercise provisions and the continued presence of "subject to limitations pro-

383. Amend. No. 12 to § 3, *id.* at 3110-12.

384. Amend. No. 13 to § 3, *id.* at 3112-19.

385. *See id.* at 3110.

386. *See id.* at 3111-12.

387. *Id.* at 3112.

vided by law" in § 6(i) indicated that §§ 6(h) and (i) were sufficient means for the state to establish uniform state-wide standards which the home rule units would be obliged to observe while retaining the power to supplement those standards by their own local ordinances.³⁸⁸ Chairman Parkhurst, acknowledging that Stahl had a point, offered to amend § 3.2(d) to allow the state to establish only *minimum* standards, so that matters of state-wide concern would remain uniform while home rule units need not fear an erosion of their basic substantive power by enactment of a network of "procedural" regulations.³⁸⁹ Consideration of Parkhurst's offer was deferred pending the outcome of Stahl's motion to delete.³⁹⁰ The convention, undoubtedly wary of the possible additional confusion which a "standards and procedures" provision could cause in the already complex preemption package,³⁹¹ deleted the provision by only one vote.³⁹²

The remaining four amendments on First Reading dealt with various attempts to reduce the three-fifths requirement to an ordinary majority or to raise the ordinary majority requirements to three-fifths. All were defeated. The first was Delegate Ladd's amendment to delete the three-fifths vote requirement for preemption under present § 6(g). Delegate Ladd argued that the legislature would find it difficult to decide when it needed a three-fifths vote under § 6(g) or a majority vote under §§ 6(h) or (i).³⁹³ The delegates were aware that confusion might well result from having two different vote standards to preempt, but they decided nonetheless that home rule municipalities (at that time, automatically all municipalities over 10,000 population) needed the protection afforded by the extraordinary majority requirement.³⁹⁴

The other three amendments sought to divide the vote by which preemption would occur so that the legislature could preempt larger home rule units only by a three-fifths vote, but could preempt smaller units by an ordinary majority vote. Presumably such a divided preemption would have assured Chicago, and other larger home units, of protection from hasty preemption, but would have allowed the legislature to restrict smaller home rule units more easily. Delegate Carey proposed an unsuccessful amendment to allow home rule units with a population of more than 50,000 to exercise a power concurrently with the state unless

388. See *id.* at 3112-13, 3117, and Delegate Elward's comments, *id.* at 3115.

389. *Id.* at 3115.

390. *Id.* at 3116.

391. Delegate Stahl called § 3.2(d) a "mischief-maker," *id.* at 3117.

392. *Id.* at 3118-19; the vote was 50-49-2.

393. See *id.* at 3328.

394. Amend. No. 22 to § 3 (Ladd), *id.* at 3328-41; defeated 28-75-3, *id.* at 3341.

three-fifths of each house denied them this power.³⁹⁵ It failed, presumably because the delegates did not want to treat Chicago and other large cities differently from the smaller ones on the question of home rule preemption. The cities and counties were already divided between those with home rule power and those without it. In the convention's view, a sub-classification of those having home rule would only complicate matters further.³⁹⁶

Delegate Gierach then moved to substitute for the three preemption provisions a two-part preemption based on population. Under this amendment, the General Assembly could deny or limit any power exercised by a home rule municipality having more than 20,000 population only by the vote of three-fifths of those elected and serving in each house. At the same time, it could deny or limit any power of a home rule county or the smaller cities by an ordinary majority. This also eliminated the exclusive and concurrent exercise provisions. The Gierach amendment failed for essentially the same reasons as the Carey amendment.³⁹⁷

Delegate Tomei's amendment was essentially the same as Gierach's, except that the classification occurred at 50,000 population. It also failed.³⁹⁸ With that, the First Reading debate on preemption ended and the convention advanced the package to SDS.³⁹⁹

When SDS rearranged the home rule section, it made minor stylistic changes and altered the vote requirement to deny or limit a power from three-fifths of the members elected to and serving in each house to three-fifths of "all the members."⁴⁰⁰ It also redrafted the exclusive exercise provision in the form of a positive act made by the legislature rather than the negative form in which the Committee on Local Government had written it.⁴⁰¹ Two changes may have greater significance. The first was the substitution of "power or function of a home rule unit" for "power or function granted by paragraph 3.1(a)" in the denial or limitation and the concurrent exercise provisions, which may suggest that any possible home rule powers derived from anywhere other than the basic home rule grant [present § 6(a)] might be covered. The second was the addition of the adverb "specifically" in the concurrent exercise provision, a word which

395. Amend. No. 23 to § 3, *id.* at 3341-46; the vote was 34-69-2.

396. See, e.g., the comments of Parkhurst, *id.* at 3344-45.

397. Amend. No. 24 to § 3, *id.* at 3346-48; the vote was by voice.

398. Amend. No. 25 to § 3, *id.* at 3348-56; Delegate Perona's attempt to limit it to municipal taxing powers failed, *id.* at 3349 by a vote of 39-42, but Delegate Lewis' suggestion to limit the amendment to "local general government" was accepted, *id.* at 3351-52.

399. *Id.* at 3360; the vote was 61-3.

400. *Comm. Proposals*, vol. VII at 1959, 1972, 1988.

401. *Id.* at 1959, 1973, 1989.

was already in the exclusive exercise provision but has never been in the denial or limitation provision. This may suggest that the General Assembly is required to be specific (or more specific) in delineating which powers or functions it is declaring exclusive or concurrent than in delineating which powers it is denying or limiting. No reason was given for these two changes.

Second Reading, while not as exciting as the first, was still eventful. The convention adopted Delegate Peccarelli's amendment to require three-fifths preemption vote to be based on the members elected to each house, not just those elected and serving at the time.⁴⁰²

The other two amendments were proposed to end the distinction between home rule preemption bills requiring a three-fifths vote and those requiring an ordinary majority. One set the requirement at three-fifths "across the board" and the other set it at an ordinary majority. By this time, everyone was aware that most of the delegates from Chicago, including all of the Regular Democrats, decidedly favored more protection against preemption than an ordinary majority vote would extend. When Vice-Chairman Carey proposed his "three-fifths-across-the-board" amendment,⁴⁰³ the delegates were aware that this was a crucial political vote. Carey's position, supported by all the Regular Democrats and several others from Chicago, was that there could be no meaningful home rule if the legislature could declare a power exclusive or concurrent with only an ordinary majority.⁴⁰⁴ This conclusion was disputed by other delegates, chiefly members of the majority of the Local Government committee. They pointed out that Chicago, the suburbs and that part of Illinois outside the collar counties each contain about a third of the state population.⁴⁰⁵ In order to pass legislation of state-wide concern it is necessary to obtain the cooperation of most legislators from at least two areas. A three-fifths vote requirement would allow only one area to exercise such great leverage that it could, in effect, prevent majority rule on matters of state-wide concern.⁴⁰⁶

The convention was tired of trying to accommodate either the forces behind a uniform three-fifths vote requirement or a uniform ordinary majority vote requirement. It defeated the

402. *Verbatim Transcripts*, vol. V at 4175. This simply means that even if there is an unfilled vacancy in a house, the vote required remains at 107 for the House of Representatives and 36 for the Senate.

403. *Id.* at 4169-74.

404. *See id.* at 4170-71, and those of Delegate Brown, *id.* at 4172, of Delegate Stahl, *id.* at 4173, and of Delegate Netsch, *id.*

405. *See* remarks of Delegate Wenum, *id.* at 4172.

406. *See also* remarks of Delegate Wenum, *id.* at 4171-72 and Delegate Durr, *id.* at 4173.

Carey amendment,⁴⁰⁷ as well as Delegate Butler's amendment to provide for an ordinary majority vote requirement on all preemption.⁴⁰⁸

Although preemption would be simpler to understand if there were a uniform vote requirement, it is easy to understand why the convention rejected both uniform vote requirements. Once the Local Government committee had decided on the split in vote requirements, it was the responsibility of proponents of either uniform vote standard to muster sufficient votes to amend the majority proposal. Although most delegates probably favored one or the other approach as their first choice, neither side could ever command a majority of the convention. Quite simply, the majority proposal represented the obvious compromise.

On Second Reading the convention also reconsidered the other major issue of preemption: whether there should be provision for establishment of uniform standards and procedures. Chairman Parkhurst offered the majority proposal which had been defeated earlier.⁴⁰⁹ He argued that without this provision the legislature could not establish fundamental standards such as public hearings and notice of zoning boards without a three-fifths vote, because zoning is purely a local function in Illinois.⁴¹⁰ Delegate Stahl responded that the exclusive and concurrent exercise provisions were adequate to provide for such matters of state-wide concern and that a standards and procedures section was therefore not only unnecessary, but also confusing and potentially a danger to meaningful home rule.⁴¹¹ The majority's standards and procedures provision was defeated again.⁴¹²

On the following day Chairman Parkhurst offered a similar amendment. The second proposal differed from the first in allowing the legislature to establish uniform procedures for all local governments, rather than "procedures" for only home rule units. After a parliamentary debate, the convention decided not to consider the amendment and the issue was settled.⁴¹³

407. *Id.* at 4169-74; defeated 46-58-1, *id.* at 4173-74.

408. *Id.* at 4174-75; defeated 12-86-2. This was a revival of Butler's and Ladd's "ordinary-majority-across-the-board" amendments on First Reading, *id.*, vol. IV at 3086-89, 3328-41.

409. *Id.*, vol. V at 4177-81. This was the same as the majority proposal deleted by Amend. No. 3 to § 3 of Local Government Committee Report No. 1 (Stahl), *id.*, vol. IV at 3112-19.

410. *Id.*, vol. V at 4178.

411. *Id.* at 4179.

412. *Id.* at 4181; the vote was 46-49.

413. *Id.* at 4191-94. Vice-President Smith ruled that Parkhurst's Proposed § 11 was in order, but the convention overruled him, 47-35 with 11 passes.

After the preemption sections were adopted as part of the article on Second Reading,⁴¹⁴ SDS rearranged the provisions and made stylistic changes. It also specified that "exclusive exercise" preemption applies only to powers and functions of home rule units. The most important change was the redrafting of the phrase, "which is not specifically declared to be exercised exclusively by the State, subject to limitation provided by law," in the concurrent exercise provision. The committee substituted for this cumbersome phrase the more specific words, "to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive."⁴¹⁵ The report gave no reason for this change, which presumably is only stylistic, but the new language clearly makes it more specific that a bill declaring exclusive or concurrent exercise must state the limits of that exercise and that home rule units may exercise all their powers beyond those declared limits. In effect, § 6(i) now operates not only as a "resulting powers" clause, but also as authorization to pass legislation providing specifically for the concurrent exercise of powers.

On Third Reading, Chairman Whalen of SDS mentioned the changes made in the preemption provisions, although he did not really explain or justify them.⁴¹⁶ The only amendment offered was one by Vice-Chairman Carey to rearrange the wording in § 6(g) to make it clear that "not exercised or performed by the state" modified "unit," rather than "powers or functions specified [in subsection (1)] of this section." This suggestion was accepted⁴¹⁷ and the preemption sections were adopted as part of the final article.⁴¹⁸

—————*Subsections 6(j) and (k)—Debt Restrictions*

Subsection 6(j) allows the General Assembly to limit the

414. *Id.* at 4207-08 by a vote of 84-4. Chairman Parkhurst stated that while he supported the article, he lamented the failure to include a standards and procedures provision. *Id.* at 4207.

415. *Comm. Proposals*, vol. VII at 2475, 2561.

416. *Verbatim Transcripts*, vol. V at 4247. He explained the change in the basis of the three-fifths vote made by the Peccarelli amendment, but did not complete his sentence explaining the change in § 6(i).

417. Delegate Weisberg discovered the ambiguous antecedent and Carey made the motion. *Id.* at 4449-50; it carried 65-1.

418. *Id.* at 4527-28; the vote was 83-0. The Address to the People says of preemption:

The General Assembly only by a three-fifths vote may limit or deny strictly local powers to home rule units; but by a simple majority may limit or deny to home rule units any power which is exercised concurrently or exclusively by the State.

Comm. Proposals, vol. VII at 2675. However, the Official Explanation of § 6 says of preemption only: "A home rule unit has the power to tax unless by three-fifths vote of each House of the General Assembly that power is denied or limited." *Id.* at 2728.

amount of debt which a home rule county may incur, whether or not that debt is payable from ad valorem property tax receipts. It also allows the legislature, by a vote of three-fifths of those elected to each house, to limit any debt, except debt payable from ad valorem property tax receipts, which a home rule municipality may incur. Subsection 6(k) supplements § 6(j) by establishing limits on the amount of debt payable from ad valorem property tax receipts which a home rule municipality may incur. Although the two provisions originated in different sections of the reports of the Local Government committee, the delegates often spoke of them as facets of the same question and the sections are certainly easier to understand when studied together.

Subsection 6(j) originated in Majority Proposal § 4.7, which was similar to § 6(j), differing chiefly in that it contained no provision on legislative limitation of home rule municipal debt.⁴¹⁹ Subsection 6(k) originated in Majority Proposal § 4.6, which established the limits on debt payable from ad valorem property taxes which home rule municipalities could incur by tying the limits to a percentage of the assessed valuation of the municipality's taxable property. Different limits were set for municipalities based upon population.⁴²⁰ The first class was composed of the three or four largest cities in Illinois; the second consisted of all other municipalities automatically receiving home rule status, which the majority thought should be triggered at a population

419. Section 4.7 of the Majority Report read:

The General Assembly may by general law limit the amount of debt which other units of local government and school districts may incur. Limits may vary according to functions performed and services provided. The General Assembly may require referendum approval of such debt.

Id. at 1581.

420. Section 4.6 of the Majority Report read:

4.6(a) Any municipality acting under the provisions of paragraph 3.1(a) may incur debt payable from property tax receipts in the following amounts:

(1) If its population exceeds 100,000, an aggregate of three per-cent of the assessed value of taxable property in the municipality.

(2) In other municipalities acting under the provisions of paragraph 3.1(a), an aggregate of two per-cent of the assessed value of taxable property in the municipality.

(3) In any municipality acting under the provisions of paragraph 3.1(b), an aggregate of one per-cent of the assessed value of taxable property in the municipality.

The debt of any such municipality which is outstanding on, or approved by referendum subsequent to, the effective date of this Article, and any debt of another unit of local government thereafter assumed, shall not be included in such amounts.

(b) The General Assembly may by general law limit only the amount of debt which such municipalities may incur in excess of the above amounts, and may require referendum approval only of such excess debt.

Id. at 1580-81.

threshold of more than 20,000; the third consisted of municipalities which had obtained home rule by referendum.

The majority report indicated that the limit on home rule municipal debt payable from ad valorem property tax receipts was the most controversial part of the debt question. Section 4.6 represented a compromise between those committee members who favored debt limits established by the constitution⁴²¹ or by the General Assembly and those members who favored leaving the matter entirely to the units of local government.⁴²² Since the property tax had long been the basic source of local revenue, it was also the traditional means of securing local debt. All four members who voted no, and Delegate Keegan, submitted dissents.⁴²³ Delegate Butler opposed any "free debt"; he thought that no debt should be secured by a direct property tax unless the people approved it at a referendum.⁴²⁴

Four members submitted a minority proposal which would have required referendum approval before almost any debt payable by a direct tax on property could be incurred and left to legislative discretion the establishment of limits on other kinds of debt. The minority thought that the "free debt" limits in § 4.6 were too high and that the public, who eventually must pay for the retirement of the debt through property taxes, should have the right to approve the assumption of the obligation.⁴²⁵

The majority report to § 4.7 indicated that the legislature, rather than the constitution, should establish any debt limits for counties, whether or not they were home rule units, for non-home rule municipalities and for all other local governments. This section also specifically allowed the legislature to establish different debt limits for these local governments based upon the "functions and services" they performed. The committee thought this section gave the legislature great flexibility in meeting the future needs of expanding local governments.⁴²⁶ There were no minority reports or dissents to the substance of § 4.7.⁴²⁷

421. ILL. CONST. art. IX, § 12 (1870).

422. *Comm. Proposals*, vol. VII at 1677-78.

423. The committee vote was 10-4 with one absent, *id.* at 1851.

424. *Id.* at 1791. Delegate Dunn, on the other hand, thought that the power to establish any debt limits should be set by the General Assembly, not the constitution, *id.* at 1793; and Keegan basically agreed with him, *id.* at 1794. Borak and Zeglis gave no reasons for their dissent, *id.* at 1792.

425. *Id.* at 1943-50. Their revision of § 4.6 required a technical change in § 4.7 as well, but made no change in its substance.

426. *Id.* at 1676-80. The committee report explained jointly §§ 4.6, 4.7 and 4.8, all of which concerned debt. Their general approach to the subject and rationale are outlined, *id.* at 1680-88.

427. The committee vote was 10-2 with 2 passes and 1 absent; *id.* at 1851. Minority Proposal 1N and Delegate Dunn's dissent objected to the substance of § 4.6 and, in passing, made a technical change in § 4.7; but

On First Reading the delegates considered seven amendments to §§ 4.6 and 4.7, but adopted only an amendment to § 4.6 to make the debt limit classification system consistent with the convention's changing stance on the population "trigger" for automatic home rule for cities.⁴²⁸ The convention defeated the four other amendments proposed to § 4.6, the most important of which was Delegate Butler's offer of the committee minority proposal to require a referendum.⁴²⁹ The second amendment was a proposal to give "free debt" only to home rule cities with more than 100,000 population, thus leaving the debt limits of smaller home rule cities entirely to the legislature.⁴³⁰ The third would have deleted § 4.6 entirely⁴³¹ and the last would have substituted a debt limit based upon \$5 per capita of the city's population for one based on property taxes.⁴³² The delegates concluded that, while the majority proposal was not the first choice of most of the delegates, it was the best possible compromise at the moment. They advanced § 4.6 to SDS.⁴³³

Since it was clear that the convention's attitude toward § 4.7 depended upon its resolution of § 4.6, the debate on § 4.7 was less eventful.⁴³⁴ After deciding that there would be a constitutional grant of "free debt" to home rule municipalities, the convention felt it necessary to retain § 4.7 as a positive expression of the legislature's inherent power to grant or restrict: 1) the powers of home rule counties; and 2) those powers of local governments to which Dillon's Rule still applied. The convention debated § 4.7 briefly and defeated two amendments. One amendment would have deleted the section on the grounds that it was an unnecessary restatement of the legislature's powers.⁴³⁵ The other was a confusing amendment which specifically allowed the General Assembly to require referendum approval of home rule

this was not an objection to the substance of § 4.7; *id.* at 1793, 1943-50.

428. When the majority of the Committee on Local Government established the division between the middle and lower classes at 20,000 population, it was thinking of its home rule section, which established 20,000 as the "trigger" for automatic municipal home rule. By the time § 4.6 was debated, the convention had just established 10,000 as the trigger. Amend. No. 20 (Lewis), offered and adopted by a 61-23 vote at *Verbatim Transcripts*, vol. IV at 3375, amended § 4.6 to conform.

429. Amend. No. 10 to § 4 of Local Government Committee Report No. 1, *Verbatim Transcripts*, vol. IV at 3208-16, defeated 34-60.

430. Amend. No. 11 (Dunn), *id.* at 3216-17, defeated by a voice vote.

431. *Id.* at 3376-79; defeated 36-73 with one pass.

432. *Id.* at 3379-80; defeated by voice vote.

433. *Id.* at 3380; the vote was 66-11.

434. Section 4.7 is considered, *id.* at 3027-30, 3199-3201, 3207-08, 3214, 3217-19, 3381-85.

435. *Id.* at 3217-18; defeated by voice vote. Note, however, Tomei's and Parkhurst's argument that without this provision, the legislature could impose debt limits on a home rule county only by a three-fifths vote under § 6(g), *id.* at 3218.

municipal debt payable from any revenue source other than property taxes.⁴³⁶

After the convention advanced § 4.7 to SDS, that committee made several changes in the debt sections. It separated the debt restrictions on home rule units from those on non-home rule units. This division crystallized the problems in setting debt limits for many different local governments.⁴³⁷ Besides rearranging and clarifying the provisions, SDS made two significant changes in § 6(j) when it eliminated the second and third sentences of the Majority Report.⁴³⁸ It is probably true that the second sentence was redundant because the legislature already possessed the power to classify local governments. However, it is difficult to understand the deletion of the third sentence, which allowed the General Assembly to require referendum approval of debt incurred by all local governments which were not home rule cities. By deleting this sentence, SDS left § 6(j) open to the interpretation that the legislature needed a three-fifths vote to limit the debt of home rule counties.⁴³⁹

SDS gave no reason for the change and no one challenged the new provisions on Second Reading.⁴⁴⁰ There were no amendments offered to the substance of § 6(j),⁴⁴¹ but the convention considered three amendments to present § 6(k). The first was proposed by Delegate Keegan and, as amended and adopted by the convention, it constituted the substance of present § 6(k).⁴⁴² It conformed the classifications to the home rule population threshold, which was finally established at 25,000.⁴⁴³ The late hour and a broken copier combined to help make this the last successful amendment to § 6(k) on Second Reading.⁴⁴⁴

436. *Id.* at 3381-85, which was defeated 11-57. Note that the same pre-emption arguments in regard to counties also would apply here.

437. *Id.* at 3386, by a vote of 87-0.

438. *Comm. Proposals*, vol. VII at 1959, 1961. SDS Report No. 13, § 8(h) is the predecessor of present § 6(j), *id.* at 1959, 1973, 1989, 1991. SDS Report No. 13, § 8(i) is the predecessor of present § 6(k), *id.* at 1959-60, 1973-74, 1989-92.

439. That interpretation was in fact adopted by the Illinois Supreme Court in *Kanellor v. County of Cook*, 53 Ill. 2d 161, 290 N.E.2d 240 (1972).

440. *Verbatim Transcripts*, vol. V at 4175-77, 4181-82, 4185-86, 4188-89, 4201-06.

441. There was a technical amendment offered to § 6(j), then numbered § 8(h), in the course of considering Amend. No. 8 to § 8, which failed. *Id.* at 4177-81.

442. Originally Amend. No. 7 to § 8 of SDS Report No. 13 (Keegan) proposed a "free debt" limit of 2½% of the assessed valuation of home rule cities with more than 500,000 population (Chicago) and set the present limits for the remaining classes. *Id.* at 4176. However, Delegate Stahl offered a successful amendment "in the spirit of compromise" to change "2½%" to "3%" in the classification for Chicago. *Id.* at 4177, adopted by a voice vote.

443. *Id.* at 4167.

444. *Id.* at 4176-77; the vote was 66-18.

The convention had achieved a consensus on the issue and quickly rejected Delegate Perona's attempt to delete all free debt for home rule cities.⁴⁴⁵ Delegate Borek made the final attempt to restrict home rule municipalities' power to incur debt in his amendment to require municipal councils to approve a debt authorization by two separate votes taken at least sixty days apart⁴⁴⁶ but eventually abandoned his effort.⁴⁴⁷ These two sections were adopted as part of the article on Second Reading.⁴⁴⁸

When SDS redrafted the article,⁴⁴⁹ it made no significant changes in the sections. The convention did no more than clarify the language on Third Reading⁴⁵⁰ and adopted the sections as part of the final article.⁴⁵¹

—————*Subsection 6(l)—Special Assessments and Differential Taxation*

Subsection 6(l) allows home rule units wide latitude in making local improvements by special assessment and almost as much latitude in imposing taxes to provide for special services. The first power is normally called the "special assessment power" and the second is called the "special service tax power" or "differential taxation" or "area taxation." Although they are very important powers, the convention almost totally approved of the new provisions. In spite of that approval, SDS regularly forgot to include them in its redrafts of the home rule section. If a few delegates had not noticed the omission on Third Reading, the constitution would have granted two significant revenue powers to non-home rule counties and municipalities that it denied to home rule counties and municipalities.

The Committee on Local Government proposed that all municipalities and counties, whether they had home rule powers

445. *Id.* at 4181-86; the vote was 20-47.

446. *Id.* at 4188-89, 4201-06.

447. The amendment originally carried by a vote of 40-26, *id.* at 4189; but the vote was reconsidered by a vote of 49-33, *id.* at 4201-03. After Borek saw the opposition to the amendment, he withdrew it, *id.* at 4206.

448. *Id.* at 4207-08; the vote was 84-4.

449. *Comm. Proposals*, vol. VII at 2427, 2562.

450. Amend. No. 6 to § 6 of SDS Report No. 15 (Tomei) substituted the phrase "home rule municipalities" for "other home rule units" in §§ 6(j) and (k) and was adopted quickly by voice vote. *Verbatim Transcripts*, vol. V at 4451-52.

451. *Id.* at 4527-28; the vote was 83-0. The Address to the People does not mention home rule debt limits, *Comm. Proposals*, vol. VII at 2675, but the Official Explanation of § 6 states in part:

Home rule counties may incur debt subject to limitation or referendum requirements imposed by the General Assembly. Home rule municipalities are allowed to incur debt within the limits set forth in Subsection (k). The General Assembly may require referendum approval and limit the debt in excess of these amounts.

Id. at 2728.

or not, be allowed to make local improvements by special assessments and to provide special services by imposing differential taxes. It used the phrase "levy or impose taxes differentially" and specifically allowed the imposition of the taxes to retire any debt incurred.⁴⁵²

The majority report to § 4.1⁴⁵³ indicated that the Committee on Local Government intended to change Article IX, § 9 of the 1870 Constitution in three major respects. First, it vested counties, as well as municipalities, with the special assessment power. Counties, as the largest and best organized government affecting unincorporated areas, were the ideal form of government to make special assessments for improvements, such as roads, sidewalks or curbs.⁴⁵⁴ Second, it gave municipalities and counties a self-executing constitutional grant of power, rather than making them depend upon enabling acts passed by the General Assembly.⁴⁵⁵ Finally, it allowed two or more municipalities or counties to exercise the power jointly in order to facilitate cooperative efforts.⁴⁵⁶

The committee proposed § 4.2 on differential taxation to allow a municipality or county to provide services needed only by certain regions of that municipality or county.⁴⁵⁷ By taxing only a certain area within its corporate limits, a municipality or county is able to provide residents of that area with a service which only those residents need. Such services could include garbage collections, special police, or fire protection. Therefore, only the residents of that area should pay for it. The committee hoped that differential taxation would allow counties and cities to assume many functions of single-purpose districts, thereby reducing the proliferation of special districts.⁴⁵⁸ It also thought that debt service of these functions would be cheaper, since a local government can incur debt more cheaply when it is secured by its own credit than by the revenue from special assessments on property.⁴⁵⁹

452. Sections 4.1 and 4.2 of the Majority Report read:

4.1 Units of local general government may make local improvements by special assessment. Any valid statutes authorizing any unit of local special government to exercise special assessment power on the date of the adoption of this Article shall continue in effect until otherwise provided by law. Any two or more units so empowered may exercise such power jointly.

4.2 A unit of local general government may levy or impose taxes differentially as provided by general law for the performance of special services and for the payment of debt.

Id. at 1579.

453. *Id.* at 1579, 1658-62.

454. *Id.* at 1659-60.

455. *Id.* at 1661.

456. *Id.* at 1662.

457. *Id.* at 1662-65.

458. *Id.* at 1664.

459. *Id.* at 1664-65.

There were no dissents or minority proposals to either provision⁴⁶⁰ and the First Reading debates indicate that the delegates understood the concepts well and considered them exciting and innovative ideas.⁴⁶¹ Delegate Arthur Lennon was concerned that the special assessments provision did not incorporate the case law on municipal special assessments, but he withdrew his clarifying amendment upon the promise that SDS would solve the ambiguity.⁴⁶²

The delegates' chief concern with the differential taxation power was the use of "differential," an undefined term with technical connotations in tax law. After discussing several substitutes, such as "subordinate taxing districts," the convention adopted the phrase, "additional taxes upon areas within such a unit."⁴⁶³

After the convention advanced the two provisions to SDS,⁴⁶⁴ that committee inadvertently eliminated them in its rearrangement of the home rule section, although it included the special assessment power in the section on non-home rule counties and municipalities.⁴⁶⁵ On Second Reading the convention quickly reinstated the language of both provisions as they had survived First Reading⁴⁶⁶ and they were adopted as part of the article on Second Reading.⁴⁶⁷

In its second redraft, SDS apparently tried to combine the special assessment power and differential tax power under the general terms "additional taxes" for "special services."⁴⁶⁸ On Third Reading, Delegate Mullen asked why these powers had been combined and placed in § 6(e), that being the list of powers which a home rule unit could exercise only if authorized to do so by the General Assembly. After a short debate on what was obviously a misunderstanding by SDS,⁴⁶⁹ the convention

460. The committee vote was 11-0-3-1, *id.* at 1851.

461. First Reading of § 4.1 is at *Verbatim Transcripts*, vol. IV at 3024, 3026, 3041, 3141-45, 3362-63 and that of § 4.2 is at *id.* at 3024, 3026, 3145-48, 3363.

462. Amend. No. 1, *id.* at 3143-45 was withdrawn, *id.* at 3145.

463. Amend. No. 2 to § 4 (Foster) would have substituted "on subordinate taxing areas," but the sponsor withdrew it upon the promise that the drafting problems would be solved later, *id.* at 3147. The language that the convention finally adopted on First Reading was that of Amend. No. 14 (Parkhurst), *id.* at 3363, adopted by voice vote.

464. *Id.* at 3363. Section 4.1 was adopted 71-0 and § 4.2 was adopted 68-2.

465. The redraft of the home rule section is at *Comm. Proposals*, vol. VII at 1958-60, 1976; the section on non-home rule municipalities and counties is at *id.* at 1960-61. Apparently the error occurred when SDS divided § 4 of the Local Government committee report into a section on powers of home rule counties and municipalities and one on powers of non-home rule counties and municipalities.

466. *Verbatim Transcripts*, vol. V at 4186-88.

467. *Id.* at 4207-08. The vote was 84-4.

468. *Comm. Proposals*, vol. VII at 2475, 2560-61, 2563, 2604.

469. *Verbatim Transcripts*, vol. V at 4247-49.

adopted the present language to clarify the intent to grant a self-executing constitutional power.⁴⁷⁰ The convention adopted the long-lost sections as part of the final article on Third Reading.⁴⁷¹

—————*Subsection 6(m)—Liberal Construction*

Subsection 6(m) exhorts judges, public officials, lawyers and all others charged with interpreting the home rule section to construe the powers and functions of home rule units liberally. It originated in Section One of the Local Government committee's Majority Report. Section One listed the purposes of the Local Government article and stated that the powers of all units of local government, not just home rule units, should be interpreted liberally to achieve those purposes.⁴⁷²

The majority report indicated that the majority was particularly anxious that the traditionally narrow interpretation of local powers in Illinois would no longer apply to home rule units.⁴⁷³ Apparently no member of the committee disagreed with the philosophy of the liberal construction mandate,⁴⁷⁴ although Delegate Dunn suggested that the sentence should be transferred to the home rule section, where it would be most beneficial.⁴⁷⁵

When the convention debated proposed Section One on First Reading,⁴⁷⁶ it became clear that most delegates wished to preserve some form of the construction sentence⁴⁷⁷ and the convention deleted Section One with the understanding that the construction sentence eventually would be reinstated.⁴⁷⁸ The

470. Amend. No. 4 to § 6 of SDS Report No. 15 (Carey-Parkhurst), *id.* at 4249-50; adopted 65-1, *id.* at 4450. From the Third Reading debates it appears that the convention intended both the special assessment and differential taxation powers to be self-executing. However, the difference in the language of the two grants led the Illinois Supreme Court to conclude that differential taxes could be imposed only after the General Assembly passed enabling legislation. *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 296 N.E.2d 344 (1973).

471. *Verbatim Transcripts*, vol. V at 4527-28. The vote was 83-0. The Address to the People may be referring in part to these provisions when it states: "All counties and municipalities have greater flexibility in providing services." *Comm. Proposals*, vol. VII at 2675. The Official Explanation of § 6 does not mention either power, *id.* at 2727-28.

472. The second sentence of § 1 of the Majority Report read: "Powers granted to units of local government shall be construed liberally to achieve the foregoing purposes." *Comm. Proposals*, vol. VII at 1576.

473. *Id.* at 1592-94.

474. The committee vote on proposed § 1 was 8-7, but the report to Minority Proposal 1A, *id.* at 1857-59, and the dissents of Delegate Butler, *id.* at 1775, and of Delegate Dunn, *id.* at 1776, indicate their objecting was solely to the first sentence, setting forth the purpose of the article.

475. *Id.* at 1776.

476. *Verbatim Transcripts*, vol. IV at 3032-38.

477. *Id.* at 3035-38.

478. *See id.* at 3037-38 and discussion of Proposed § 1 in text accompanying notes 85-93 *supra*.

delegates later placed the sentence in the home rule section by amendment.⁴⁷⁹ SDS gave the sentence its present form after First Reading,⁴⁸⁰ which it retained throughout Second⁴⁸¹ and Third Readings, when it was finally adopted.⁴⁸²

Section 7. Counties and Municipalities Other Than Home Rule Units

Obviously all Illinois local governments which do not have home rule status remain "creatures of the state" pursuant to Dillon's Rule. The convention decided, however, that even those counties and municipalities which did not have home rule status ought to have some self-executing constitutional grants of power.⁴⁸³ Section 7 restates the basic Dillon's Rule formula as to these counties and municipalities, and then enumerates six powers which are virtually identical to six powers contained in the home rule section.⁴⁸⁴

These powers are not listed in the same order as in the home rule section and it is sometimes difficult to understand the development of one § 7 power without studying another. Therefore, the following discussion of § 7 is divided into three topics:

1. Powers of special assessment and differential taxation, [§ 7, subsections (1) and (2)] which are identical to § 6(1).
2. Powers Concerning Forms of Government and Officers, [§ 7, subsection (2) (3) and (4)] which are similar to § 6(f).
3. Power to Incur Debt, [§ 7, subsection (5)] which is similar to § 6(d) (4).

All the provisions of § 7 originated in § 4 of the Committee on Local Government Majority Report No. 1. Section 4 contained provisions relating to home rule units, to counties and municipalities not having home rule and, to a certain extent, other units of local government and school districts. When SDS rearranged the Local Government article after First Reading, it

479. Proposed Addition 1 to § 3 of Local Government Committee Report No. 1 (Dunn) added a new § 3.5, *Verbatim Transcripts*, vol. IV at 3138-39 by voice vote.

480. SDS Report No. 13, § 8(j) also placed a similar sentence in the section on powers of non-home rule counties and municipalities as § 9(b), *id.* at 1961, 1975, 1993, thinking that the convention may have wanted these powers to be construed liberally as well.

481. Section 8(j) of SDS Report No. 13 was not debated on Second Reading; the convention deleted the construction sentence in § 9(b) by Amend. No. 2 to § 9 (Stahl), *Verbatim Transcripts*, vol. V at 4190-91; adopted by voice vote, *id.* at 4191. Section 8(j) was adopted as part of the article, *id.* at 4207-08.

482. *Id.* at 4448-50, where it was renumbered as § 6(m), and at *id.* at 4527-28, where it was adopted as part of the final article. Neither the Address to the People nor the Official Explanation mentions the provision.

483. See text accompanying notes 210-217 *supra*.

484. See ILL. CONST. art. VII, § 7 (1970).

divided § 3 "Powers of Local Self-Government" and § 4 "Other Local Powers and Limitations" into three sections. Each dealt with a type of government: home rule counties and municipalities (§ 6); non-home rule counties and municipalities (§ 7); and other units of local government and school districts (§ 8). Thus, § 6 contains provisions on special assessments, differential taxation, forms of government, local officers and the forty-year debt limit, all of which originated in § 4, not § 3, of the Majority Proposal. Section 7 contains similar provisions and § 8 contains the provisions on special assessment and forty-year debt limit. All of these topics were discussed together at the convention. Section 7(1) on special assessments originated as § 4.1 of the majority proposal of the Committee on Local Government⁴⁸⁵ and § 7(7) originated as § 4.2 of the majority proposal.⁴⁸⁶ Since a description of the committee's reasons for advocating these two powers is given in the discussion of § 6(1), which is identical to these subsections, the discussion will not be repeated here.⁴⁸⁷ The convention readily accepted the provisions on First Reading and considered them useful tools for all municipalities and counties.⁴⁸⁸

When SDS redrafted the Local Government article, it made stylistic changes in the special assessment provision and placed it in the section on powers of counties and municipalities which do not have home rule.⁴⁸⁹ It also inadvertently omitted the differential taxation provision.⁴⁹⁰ On Second Reading the convention quickly reinstated that power⁴⁹¹ and the two provisions were adopted as part of the article.⁴⁹²

When SDS redrafted the Local Government article, it placed the special assessment power at the beginning and the differential taxation power at the end of the list of powers of non-home rule counties and municipalities.⁴⁹³ It also drafted the present language of the special assessment power⁴⁹⁴ and what is substantially the present language of the differential taxation power.⁴⁹⁵

485. *Comm. Proposals*, vol. VII at 1579.

486. *Id.* at 1658-62.

487. *See id.* at 1659, 1662-65.

488. *See generally* the description of the committee report to § 4.1 and *Comm. Proposals*, vol. VII at 1662-65.

489. *See generally* the description of the committee report to § 4.1 and *Verbatim Transcripts*, vol. IV at 3024-26, 3145-48 and 3363 for § 7(6). Both were adopted, *id.* at 3363, special assessments by a vote of 71-0 and differential taxation by 68-2.

490. *Comm. Proposals*, vol. VII at 1960, 1974, 1993.

491. *Verbatim Transcripts*, vol. V at 4186-88.

492. *Id.* at 4207-08.

493. *Comm. Proposals*, vol. VII at 2476-77, 2563, 2604.

494. *Id.*

495. *Id.* The difference between "as provided by law," as the committee drafted it, and "in the manner provided by law," as the conven-

On Third Reading the members of the Local Government committee and SDS made it clear that a municipality or county could exercise a special assessment power with a member or members of a class of local government without exercising the power with all members of the class. Thus, a municipality could exercise the special assessment power jointly with only one sanitary district bordering it without having to join with all other sanitary districts in the vicinity.⁴⁹⁶ There were no other serious questions about SDS's new language, and both the special assessment and differential taxation powers were adopted as part of the final article.⁴⁹⁷

Section 7(2) allows all non-home rule counties and municipalities to establish, amend or reject their forms of government by referendum. Section 7(3) allows municipalities to provide for their officers by referendum. Section 7(4) stipulates that counties must provide for their officers according to § 4 ("County Officers") of the Local Government article. All three provisions are quite similar to § 6(f) on the powers of home rule units, with which they share a common genesis and purpose.

Section 4.3 of the proposed article allowed all counties and municipalities much latitude in shaping their forms of government and choosing their officers. The committee decided that the structure of a local government is almost totally a local affair. It also thought that counties and municipalities, as the two most important units of local government, needed greater flexibility in determining that structure.⁴⁹⁸

On First Reading the delegates accepted the concept of granting counties and municipalities substantial powers to structure

tion adopted it on Third Reading, *Verbatim Transcripts*, vol. V at 4527-28, may be significant. See discussion of Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park, discussed *supra* in connection with Art. VII, Section 6(1). SDS explained that the phrase, "incurred in order to provide those special services," was added to make it clear that special service debt could be incurred only to provide special services. *Comm. Proposals*, vol. VII at 2604.

496. See *Verbatim Transcripts*, vol. V at 4251.

497. *Id.* at 4527-28. The Address to the People may be referring in part to these powers when it says: "All counties and municipalities have greater flexibility in providing services." *Comm. Proposals*, vol. VII at 2675.

The Official Explanation of § 7 states, in part:

This section is new. Municipalities and counties not exercising home rule power will have only those powers granted them by laws enacted by the General Assembly and the powers listed in this section. Among other things, this section allows municipalities and counties powers to make local improvements by special assessments It also provides that they can levy taxes to pay debts incurred to provide special services as provided by law.

Id. at 2729.

498. See generally the discussion of the origin of § 4.3 in connection with the description of § 6(f) in text accompanying notes 345-357 *supra*, and at *Comm. Proposals*, vol. VII at 1579, 1665-69.

their governments, but several delegates pointed out conflicts between § 4.3 and the drafts of other sections of the article.⁴⁹⁹ After adopting an amendment to resolve these difficulties,⁵⁰⁰ the convention adopted § 4.3.⁵⁰¹

When SDS separated the powers of home rule units from those of counties and municipalities not having home rule, it placed the power to select a form of government into one subsection and that of choosing officers into another subsection.⁵⁰² The committee made only stylistic changes in the provision on forms of government, which emerged from committee in the form of present § 7(2). The provision on officers was divided into two subsections. Section 7(3) was the provision on municipal officers as the convention had approved it, with stylistic changes, and § 7(4) was a provision on county officers which established § 4 of the article as the source of counties' power to provide for their officers.⁵⁰³

There were no substantive amendments offered on Second Reading and the three subsections of § 7 were adopted as part of the article.⁵⁰⁴ SDS made only two minor clarifications in its second redraft⁵⁰⁵ and the three provisions were adopted as part of the final article on Third Reading.⁵⁰⁶

Section 7(5) allows non-home rule counties and municipalities to incur debt within limits set by the General Assembly. Debt payable from ad valorem property tax receipts must mature within forty years from the time it is incurred. This forty-year debt limit is the same as the one for home rule units [§ 6 (d) (1)] and for other units of local government and school districts [§ 8(1)]. It originated in § 4.8 of the report of the Committee on Local Government. It represented the committee's conclusion that the twenty-year debt limit in the 1870 Constitution was unrealistic. Most capital improvements last for longer than twenty years and the committee thought that the length of debt service ought to approximate closely the expected useful life of the improvement.⁵⁰⁷

499. *Verbatim Transcripts*, vol. IV at 3025-26, 3148-50, 3363-65.

500. *See Verbatim Transcripts*, vol. IV at 3363-64.

501. *Id.* at 3365.

502. *See Comm. Proposals*, vol. VII at 1960-61, 1992-93.

503. *Id.* at 1961, 1992-93.

504. *Verbatim Transcripts*, vol. V at 4187; adopted, *id.* at 4207-08.

505. *Comm. Proposals*, vol. VII at 2477, 2563.

506. *Verbatim Transcripts*, vol. V at 4527-28. The Address to the People does not mention these subsections, but the Official Explanation of § 7 includes in its list of powers of non-home rule counties and municipalities, the power "[to] change their form of government by referendum. . . ." *Comm. Proposals*, vol. VII at 2729.

507. *See generally* the discussion of § 6(d) (1) in text accompanying notes 267-273 *supra*, and *Comm. Proposals*, vol. VII at 1581, 1677-80. The former debt limit was at ILL. CONST. art. IX, § 12 (1870).

On First Reading Chairman Parkhurst stated that the General Assembly could set a debt limit shorter than 40 years.⁵⁰⁸ The convention amended the section to limit its scope to debt payable from ad valorem property tax receipts⁵⁰⁹ and advanced it to SDS.⁵¹⁰

When SDS redrafted the article, it made minor stylistic changes in the debt power provision for non-home rule counties and municipalities⁵¹¹ and it was adopted without any substantive amendment offered to it as part of the article on Second Reading.⁵¹² By the end of Second Reading the provision was in its present form and SDS made no changes in it.⁵¹³ Section 7(5) was adopted as part of the final article on Third Reading without controversy.⁵¹⁴

Section 8. *Powers and Officers of School Districts and Units of Local Government Other Than Counties and Municipalities.*

Townships, school districts and special districts cannot have home rule status; nor can any other districts exercising limited powers which are designated by the General Assembly as units of local government. Therefore, like counties and municipalities which do not have home rule powers, they are "creatures of the state" pursuant to Dillon's Rule.⁵¹⁵ The convention decided that these governmental units should have no specific constitutional grants of power.

Section 8 contains four provisions. First, it restates Dillon's Rule as to these units. It forbids the General Assembly to enact laws allowing these governments to incur debt payable from ad valorem property tax receipts which would mature after the forty-year debt limit. It forbids the General Assembly to enact laws allowing them to make improvements by special assessments, although any government which had that power on the effective date of the constitution was allowed to keep it. It also directs the General Assembly to determine the selection of the officers of these units in any manner except by judicial appointment.⁵¹⁶

508. *Verbatim Transcripts*, vol. IV at 3218-19.

509. *Id.* at 3388-90.

510. *Id.* at 3392.

511. *Comm. Proposals*, vol. VII at 1961, 1974, 1978, 1992-93.

512. *Verbatim Transcripts*, vol. V at 4207-08. Section 9(a)(4) was renumbered as § 9(a)(5) as part of another amendment to § 9(a), *id.* at 4186-88.

513. *Comm. Proposals*, vol. VII at 2477, 2563.

514. *Verbatim Transcripts*, vol. V at 4527-28. The Address to the People does not mention § 7(5), but the Official Explanation says rather coyly that the provision "authorizes the General Assembly to impose debt limits." *Comm. Proposals*, vol. VII at 2729.

515. See text accompanying notes 21-22 *supra*, for a discussion of Dillon's Rule.

516. See ILL. CONST. art. VII, § 8 (1970).

The first three provisions were not controversial. The forty-year debt limit provision is essentially the same as that found in § 6(d)(1) and § 7(5). It originated in the report of the Local Government committee and was scarcely debated throughout its development.⁵¹⁷ The special assessment power limitation originated in § 4.1 of the committee's report.⁵¹⁸

The provision on appointment of officers was very controversial indeed. One of the distinguishing features of the special district in Illinois was that many of its officers were appointed by the judiciary. At the turn of the century some political reformers thought that if judges appointed these officials, the districts would be removed from partisan politics.⁵¹⁹

Section 14, the majority's proposal on officers of units of local special government, restated the law as it existed at that time; namely, that it was the General Assembly's responsibility to provide for the selection of these local officers.⁵²⁰ The controversy arose over the prohibition of the appointment of these officers by the judiciary. In 1970 the officers of hundreds of special districts were appointed by the judges of the circuit courts. After reviewing the judges' record of appointments, the majority concluded that this particular reform measure no longer served the public and that judicial appointments in fact diluted the district's responsibility to the public. The majority suggested that several means of selection were available, all of which were superior to judicial appointment. For example, the officers of

517. See generally, the discussion of § 6(d)(1) in text accompanying notes 267-73 *supra*; and § 4.8 at *Comm. Proposals*, vol. VII at 1581, 1677-80. Section 4.8 of the Local Government Committee Report read: "All units of local government and all school districts shall pay any debt within 40 years from the time it is incurred." *Id.* at 1581.

518. Section 4.1 of the report of the Committee on Local Government stated:

4.1. Units of local general government may make local improvements by special assessment. Any valid statutes authorizing any unit of local special government to exercise special assessment power on the date of the adoption of this Article shall continue in effect until otherwise provided by law. Any two or more units so empowered may exercise such power jointly.

Id. at 1579.

In the second sentence, a "unit of local government" meant a township, special district or unit with limited powers, not including school districts. See Section 2—*Definitions* of the majority report, later deleted; *id.* at 1576-77, and the report to § 4.1; *id.* at 1658-62.

519. See discussion of this development in the text accompanying note 10 *supra*.

520. The debt limit originated in § 4.8 of the Majority Report, *Comm. Proposals*, vol. VII at 1581, 1677-80; the special assessment provision also originated in the Majority Report, *id.* at 1579, 1658-62, as did the "officers of units of local special government" provision, *id.* at 1588, 1759-61. Section 14 of the Majority Report read: "The General Assembly shall provide by general law for the selection of officers of units of local special government, but such officers shall not be appointed by any person in the judicial branch." *Id.* at 1588.

counties and municipalities, who are themselves elected by the public, could appoint the officers.⁵²¹

The four member minority⁵²² thought that § 14 should be deleted because it was unnecessary, attempted to place legislative matters into the constitution, and was based upon an erroneous view of the role of selection of the officers of these districts. The minority contended that there were good reasons for the judicial appointment of the officers. They pointed out that local judges are generally very familiar with local conditions and are more independent of political influence than officials of other branches of government.⁵²³

On First Reading, when Delegate Anderson spoke for the majority, she pointed out that between 65 and 80 percent of all special district boards are appointed by the courts. She contended that although the judges may have performed their duties well, this function was essentially non-judicial. She said the major defect in the appointment system was that the district officers could not be held accountable to the electorate because they were neither elected themselves nor appointed by officials who must stand for re-election.⁵²⁴

The minority and other opponents presented their argument that judicial appointment was a reasonable means of choosing these officers. The questions and debate centered upon the probable alternatives to judicial appointment. As one delegate said, the other means of selection might prove to be worse than judicial appointment.⁵²⁵

However, most delegates concluded that the General Assembly would choose a selection system, or systems, which would be preferable to judicial appointments. It rejected Delegate Carey's offer of the minority proposal, which would have deleted the entire section,⁵²⁶ and Delegate Hutmacher's motion to delete just the prohibition on judicial appointments.⁵²⁷ It also rejected both Delegate Hendren's suggestion that the judiciary be allowed to appoint officers of district and township hospital boards⁵²⁸ and Delegate Kinney's amendment to require election of the officers.⁵²⁹ After a short discussion of the definition

521. *Id.* at 1759-60. The majority also suggested direct election of the officers or appointment by a Board of Electors.

522. The committee vote, without dissent, was 10-0 with 4 absent, *id.* at 1851.

523. *Id.* at 1939-42.

524. *Verbatim Transcripts*, vol. IV at 3432-34.

525. *Id.* at 3432-48. See remarks of Delegate Davis, *id.* at 3440.

526. *Id.* at 3442-44, by a vote of 38-57.

527. *Id.* at 3434-42, by the close vote of 49-52 with two passes.

528. *Id.* at 3445-46, by a vote of 37-52.

529. *Id.* at 3446-48, by a vote of 47-61. During the debate, Delegate Anderson stated this would require election of about 14,000 officers, *id.* at 3448.

of the governments covered by § 14, the convention adopted it on First Reading.⁵³⁰

SDS combined the provisions on debt limit, special assessment and selection of officers into one section. It made minor stylistic changes and drafted the language substantially as it is now.⁵³¹ On Second Reading Hutmacher offered his amendment to strike the prohibition on judicial appointments, which the convention again rejected,⁵³² and the section was adopted as part of the article on Second Reading.⁵³³ SDS made only minor stylistic changes in its second redraft (the present § 8)⁵³⁴ and the convention adopted it, without debate, on Third Reading.⁵³⁵

Section 9. *Salaries and Fees*

Section 9(a) contains three separate provisions on fees. Fees are payments for specific government services, such as fees for marriage licenses or the filing of deeds or court papers. The first sentence of § 9(a) prohibits fee officers. The second requires fees to be deposited "upon receipt." The third prohibits a government, which collects taxes for other units, to charge them a fee based upon taxes collected. This section did not become effective under § 1(b) of the Transition Schedule until December 1, 1971.⁵³⁶ Section 9(b) prohibits the raising or lowering of an elected officer's salary during his term of office.

Section 9(a) originated in § 9 of the Report of the Local Government committee, but § 9(b) was added by block amendment. Section 9 of the committee report was essentially the same as the present § 9(a) except that the committee proposal did not specifically allow collection of fees "by ordinance."⁵³⁷

530. *E.g.*, Delegate Anderson stated that a Board of Election Commissioners was not a special district, *id.* at 3448. Section 14 was advanced by a vote of 78-13, *id.*

531. *Comm. Proposals*, vol. VII at 1961-62, 1975, 1994-95. There is some doubt about the status of school districts in § 10(b) of the SDS redraft, but their officers had never been appointed by the judiciary anyhow.

532. *Verbatim Transcripts*, vol. V at 4198-99, by a vote of 37-49.

533. *Id.* at 4207-08.

534. *Comm. Proposals*, vol. VII at 2477-78, 2563-64, 2604.

535. *Verbatim Transcripts*, vol. V at 4248, 4527-28. The Address to the People does not mention § 8 in its summary of Article VII; *Comm. Proposals*, vol. VII at 2675. Of § 8, the Official Explanation states:

This section states that local governments other than counties and municipalities have only those powers granted them by the General Assembly and this Constitution. This section also authorizes the General Assembly to limit the powers of those units to incur debt. The General Assembly must provide by law for the selection of officers of these units. Officials of these units of local government may not be appointed by the Judiciary.

Id. at 2729.

536. See ILL. CONST. art. VII, § 9 (1970); *id.* trans. sch., § 1(b).

537. Section 9 of the Local Government Committee Report No. 1 read:

The committee report emphasized the basic power of the General Assembly to regulate the collection of fees by local governments.⁵³⁸ It had long been the practice in Illinois to give some local officials no salary, but to allow them to keep the fees they collected from the public. The legislature set a ceiling on the amount each type of official could receive. The 1870 Constitution partially reformed the system by requiring many officials to be placed on salary.⁵³⁹ However, some county and township officials continued to be compensated from fees they collected.

The committee thought this practice blurred the responsibility to provide adequate salaries for local officials. In some cases, the ceiling on the amount of fees which an official could collect was very low. The committee concluded that modern public administration practice required the abolition of payment from fees.⁵⁴⁰

Since compensation from fees was abolished, it was required that each officer receiving a fee should deposit it with the treasurer of that local government "upon receipt." The committee gave no definition of "upon receipt," but clearly it wanted to end the practice whereby each officer who collected fees could have a separate bank account. If all fees were deposited in one account, the governing board of that unit could establish more efficient and profitable accounting practices.⁵⁴¹

The only controversial part of the proposal was the abolition of the "extension fee."⁵⁴² Counties and townships have long extended and collected property taxes on behalf of the local governments and school districts within their areas. Prior to the 1970 Constitution, the statutes allowed each county and township to collect a service charge, from each local government and school district. This charge, usually called an "extension fee," was based upon a percentage of the taxes extended, collected and disbursed by the county or township.

Officers and employees of units of local government shall not be compensated, and office expense shall not be paid by fees collected. All fees shall be deposited upon receipt with the treasurer of the unit. Officers and employees of units of local government may collect fees in the amounts and in the manner as provided by law, but fees shall not be based upon funds collected or the levy or extension of taxes.

Comm. Proposals, vol. VII at 1584-85.

538. *Id.* at 1717.

539. ILL. CONST. art. X, §§ 9-13 (1870).

540. *Comm. Proposals*, vol. VII at 1717-21.

541. *Id.* See also § 4(e) of Article VII, which allows the county treasurer to act as treasurer for all the units in his county. Presumably this would mean that all fees would then be deposited in the county treasury.

542. This abolition was suggested in *Member Proposal 22* (Friedrich); *Comm. Proposals*, vol. VII at 1825.

While the convention was meeting, the Illinois Supreme Court held that the "commissions" or "extension fees" charged by township collectors in suburban Cook County violated constitutional requirements on uniformity of taxation.⁵⁴³ The committee thought that the decision might well apply to other counties, too, and decided to prohibit the practice.

The unanswered question was how counties could recoup this revenue loss. Certainly the other local governments would stand to benefit from this abolition. The school districts would benefit even more. To the extent that they gained, however, the county lost. The committee report does not discuss the question and there were no dissents or minority reports to the proposal.⁵⁴⁴

On First Reading⁵⁴⁵ there was no opposition to prohibiting compensation from fees. However, Delegate Dunn sought to include clerks of the circuit court, normally considered part of the judicial branch, in the ban. In order to obviate any administrative hardships caused by forcing the clerks and other officers who collect fees to deposit fees "upon receipt,"⁵⁴⁶ he amended the sentence on deposits to make the mandate only applicable if the General Assembly or a local ordinance required it. However, the convention decided not to require clerks of the circuit court to deposit fees upon receipt.⁵⁴⁷

Delegates Rigney and Arthur Lennon advocated deleting the abolition of the extension fee, saying that this loss of revenue would work a great hardship on smaller counties, especially the rural ones. The convention, however, was persuaded by Zeglis that the extension fee was in reality a hidden and inequitable surtax imposed by the counties upon the property taxpayers and that the collection fee system was probably unconstitutional. The motion to delete the ban failed.⁵⁴⁸

Building upon a suggestion made earlier by Zeglis, Delegate Netsch then suggested adding language to allow local officials to collect fees according to ordinance, as well as according to law. She argued that if a local government imposed a fee which was not prescribed by state law, then it needed this power to regulate collection of the fee. Delegate Kinney immediately asked what would happen if an ordinance, such as an ordinance enacted under home rule power, conflicted with a statute on the method of collecting fees. Netsch replied that she thought the

543. *Flynn v. Kucharski*, 45 Ill. 2d 211, 258 N.E.2d 329 (1970); *Comm. Proposals*, vol. VII at 1723-25.

544. The committee vote was 14-0 with one absent.

545. *Verbatim Transcripts*, vol. IV at 3027, 3403-18.

546. In explaining the section for the committee, Delegate Zeglis said he thought "upon receipt" meant "daily." *Id.* at 3407.

547. *Id.* at 3411-13.

548. *Id.* at 3413-15, by 44-52.

question of precedence would not depend upon this section.⁵⁴⁹ Nonetheless, the ambiguous amendment was adopted.⁵⁵⁰

Section 9(b) was incorporated by amendment with very little debate. Dunn explained that the executive, legislative and judicial branches all had a provision concerning the raising or lowering of salaries during the terms of the incumbent officers. He thought that no elected local officer's salary ought to be raised or lowered during his term in office. After a short debate, the convention instated the ban on changing elected officers' salaries, but refused to extend it to appointed officers as well.⁵⁵¹

After the convention adopted the section,⁵⁵² SDS made stylistic changes in redrafting the section.⁵⁵³ On Second Reading Zeglis offered an amendment to prohibit collection fees based on the percentage of funds disbursed, as well as taxes collected. The convention immediately corrected this oversight, and the township supervisors lost their 2 percent disbursement fee.⁵⁵⁴

SDS made minor changes in § 9(a) to incorporate this amendment and submitted the section in its present form,⁵⁵⁵ which the convention adopted as part of the final article on Third Reading.⁵⁵⁶ It also established December 1, 1971 as the effective date for § 9(a). Since some counties' fiscal year runs from December 1st through November 30th, those counties were preparing their budgets while the convention was meeting. They were depending upon the anticipated revenues from collection fees in their projected budgets for December, 1970 to November, 1971.

Section 10. *Intergovernmental Cooperation*

This section allows local governments and school districts to combine their efforts and resources with other governments and private parties to solve common problems.⁵⁵⁷ Of the three subsections in § 10(a) is the basic grant of power to cooperate with

549. *Id.* at 3416.

550. *Id.* at 3415-18.

551. *Id.* at 3408-11. Amend. No. 1 to the Dunn amendment (Lewis), which would have included appointed officers as well, was rejected, *id.* at 3410-11.

552. *Id.* at 3418, by 73-3.

553. *Comm. Proposals*, vol. VII at 1957, 1970.

554. *Verbatim Transcripts*, vol. V at 4157-58.

555. *Comm. Proposals*, vol. VII at 2478, 2564.

556. *Verbatim Transcripts*, vol. V at 4625-26. The Address to the People makes no mention of the section, but the Official Explanation states: This changes Article X, Sections 9, 10, 11, 12 and 13, of the 1870 Constitution. This section places local officials on a salaried basis and eliminates fee officers. It also would end the practice of charging fees for the collection of taxes.

Comm. Proposals, vol. VII at 2730.

557. See ILL. CONST. art. VII, § 10 (1970).

other governments and private parties. It also allows the participating local governments and school districts to combine their financial resources to pay for the intergovernmental activities. For example, several small suburbs could contract with a city to purchase water from its municipal water supply.

To implement this power, § 10(b) allows officials of the local governments and school districts to participate in activities authorized by their governments. Finally, § 10(c) mandates the state to encourage intergovernmental cooperation and to assist intergovernmental activities with its technical and financial resources.

Section 10 originated in the Local Government committee, to which two member proposals authorizing intergovernmental cooperation had been referred.⁵⁵⁸ When the committee proposed an intergovernmental cooperation section, neither a minority report nor a dissent was filed.⁵⁵⁹ Although the committee proposal was almost identical to the final provision, the most significant difference was the absence in the committee proposal of a specific grant of the power to cooperate with "individuals, associations and corporations."⁵⁶⁰

The grant of power to cooperate with other governments was really a form of "limited home rule" for all local governments and school districts. As the report states, the purpose of the intergovernmental cooperation is to provide maximum flexibility in solving common problems.⁵⁶¹ The very language of proposed § 11(a) [present § 10(a)] is a mirror-image of Dillon's Rule.⁵⁶²

Under the 1870 Constitution, local governments and school districts could not cooperate unless they had permission from the legislature. To be sure, the General Assembly frequently did grant such authority in specific areas. However, the legislature did not grant the authority until a community decided that it needed to cooperate with a neighbor to solve a particular problem. Since it normally takes several months for that need to be translated into an effective act, many communities simply did not provide services as cheaply as they could if they had shared the expense with their neighbors. Moreover, the psychological effect of Dillon's Rule on local officials inhibited a creative exer-

558. *Member Proposal 30* (Stahl), *Comm. Proposals*, vol. VII at 2853 and *Member Proposal 175* (Leahy), *id.* at 2920, both provided for the power in general terms.

559. *Comm. Proposals*, vol. VII at 1586-87; the report is at 1747-52. The committee vote was 14-0 with one absent, *id.* at 1851.

560. *Id.* at 1587.

561. *Id.* at 1747.

562. See discussion of Dillon's Rule at text accompanying note 10 *supra*.

cise of most intergovernmental powers. The authorizing statutes were not well organized or cohesive. As a result, a local official would advise his government that it had no power to cooperate unless he could find a specific statute authorizing the cooperation. Furthermore, the state had long been prohibited from assisting local governments on a cooperative basis by a constitutional provision prohibiting the state from extending its credit or financial assistance to the local governments.⁵⁶³

On First Reading it became clear that the convention was as enthusiastic as the committee about intergovernmental cooperation. Delegate Stahl, who shared presentation of the section with Delegate Wenum, emphasized that intergovernmental cooperation was not a panacea but simply one way that common problems could be solved at the lowest possible cost. The convention made it clear that the power to cooperate resided in the governing board of each unit, not in the officials of that unit, by adding the phrase "or by ordinance" after "in any manner not prohibited by general law."⁵⁶⁴

The convention defeated two amendments on First Reading. One would have extended the power by allowing cooperation "with individuals, corporations, associations, and other entities and organizations within or without Illinois." In offering this amendment, the proponents sought to allow local governments to hire private parties to perform public services. For example, a small municipality might hire a private security agency in lieu of maintaining a police force. The delegates were confused about the need for a specific provision which granted a potentially dangerous power and, for the moment, rejected the suggestion.⁵⁶⁵

It also rejected a suggestion that the power not be extended to cooperation "with other states and units of local governments and school districts from within the United States." Delegate Lawlor proposed the deletion because he envisioned the power to cooperate with governments outside Illinois as a threat to state sovereignty and home rule. The convention apparently did not fear federal "bureaucratic dictatorship" and "metro-government" as much as he did because it rejected the deletion.⁵⁶⁶

563. State aid was prohibited by ILL. CONST. art. IV, § 20 (1870), discussed at *Comm. Proposals*, vol. VII at 1750. The other constitutional issues are discussed at *id.* at 1751-52.

564. *Verbatim Transcripts*, vol. IV at 3422.

565. *Id.* at 3425-29, defeated by a tie vote.

566. *Id.* at 3429-31. Note that this is apparently the only discussion in the proceedings of the possibility of a home rule unit's power to use its police and revenue powers to by-pass the state government and contract with the federal government, e.g., the dispute over Chicago's power to associate with the United States government in building the "Cross-town Expressway." One of the results of proposing a universally popu-

After the convention adopted § 10 on First Reading,⁵⁶⁷ SDS made only a few stylistic changes in the language.⁵⁶⁸ The only discussion on Second Reading was over the addition of the second sentence in present § 10(a) allowing cooperation with "individuals, associations and corporations" with permission of the General Assembly. This amendment incorporated the point of Amendment No. 2, which had been defeated on First Reading, and was sponsored by several members of the Local Government committee. The revised amendment allowed contracting with private parties only after the General Assembly authorized that type of contract. Apparently the amendment's sponsors feared that the power to cooperate with private parties was so subject to abuse that it should be exercised only with the permission of the legislature. The convention adopted the amendment,⁵⁶⁹ and SDS made only minor stylistic changes in it.⁵⁷⁰

On Third Reading the proponents of the amendment allowing cooperation with private parties stated that they had erred in drafting language which required legislative permission before local governments and school districts could cooperate with private parties.⁵⁷¹ At their request, the convention adopted a corrective amendment designed to permit cooperation with private parties without prior legislative authorization.⁵⁷² The convention then adopted § 10 as part of the final article.⁵⁷³

Section 11. *Initiative and Referendum*

Section 11 establishes the procedure for holding initiatives and referenda on local government problems. Of the two subsections of § 11, subsection (a) allows referenda required for action under the Local Government article to be placed on the ballot either by resolution of the governing board of the unit involved or by petitions initiated and circulated by the people. In accordance with subsection (b), these referenda must be held at general elections, not special elections called only for a vote on the

lar section is that many ambiguities and possible problems are not discussed.

567. *Id.* at 3431, by 62-1.

568. *Comm. Proposals*, vol. VII at 1957-58, 1970-71, 1986-87. Most changes eliminated redundancies.

569. *Verbatim Transcripts*, vol. V at 4165.

570. *Comm. Proposals*, vol. VII at 2478-79, 2565.

571. *Verbatim Transcripts*, vol. V at 4253, 4444-46.

572. *Id.* at 4444-46, by 82-5.

573. *Id.* at 4527-28. The Address to the People states: "Wide latitude in intergovernmental cooperation is permitted." *Comm. Proposals*, vol. VII at 2675. The Official Explanation of § 10 states:

This section is new. It permits governments at all levels to cooperate in working out common problems. Thus, one local government can contract with another government or private parties to share services and divide the costs equitably.

Id. at 2730.

referendum, unless the legislature permits it. Subsection (b) also states that a majority vote is needed for adoption of any issue unless the Local Government article specifies a different vote.⁵⁷⁴

Section 11 originated as § 12 of the committee proposal. As proposed, the section was virtually identical to the present one except that it required referenda held pursuant to Article VII to be submitted at "regular," not "general" elections.⁵⁷⁵

Since a major purpose of the Local Government article is to allow flexibility in choosing the form, structure, powers, functions and territory of a local government, the committee sought to insure that the public, as well as the officials of each unit, would be allowed maximum opportunity to change their local governments. Thus, § 11(a) grants a limited right of initiative to the electorate. The "initiative" is the procedure whereby registered voters may circulate petitions asking that a certain issue be placed on the ballot at a referendum. This enables citizens to by-pass a governing board opposed to placing the issue before the public.⁵⁷⁶

Section 11(b) was included to bring order into the referendum process. Both the 1870 Constitution and the statutes had prescribed different dates for different local referenda. The report suggested that some local officials manipulated dates on bond referenda in order to promote or discourage a favorable vote on the issue. If local officials could hold referenda only at "regular" elections, they would be less able to manipulate a vote.⁵⁷⁷

On First Reading⁵⁷⁸ Delegate Butler simply explained the section on behalf of the Local Government committee. In response to the only question, he said that the committee thought that a governing board could authorize a referendum by passing a "resolution" as well as by an "ordinance," since both are formal actions of a governing board. The section was immediately adopted without debate.⁵⁷⁹

All of the changes made in the first redraft by SDS were minor, except one. The committee changed "regular" election to "general" election in § 11(b) because it thought that the latter word better expressed the convention's intent.⁵⁸⁰ As there was

574. See ILL. CONST. art. VII, § 11 (1970). The vote requirements referred to in § 11(b) are found at §§ 2(c), 3(c), and 5 of art. VII.

575. See *Comm. Proposals*, vol. VII at 1587-88. The committee vote on §§ 12.1 and 12.2 was 14-0, with one absent; *id.* at 1851. There were no minority reports or dissents.

576. *Id.* at 1753-54.

577. *Id.* at 1755-56.

578. *Verbatim Transcripts*, vol. IV at 3027-28, 3431.

579. *Id.* at 3431, by a vote of 67-0.

580. *Comm. Proposals*, vol. VII at 1962, 1978, 1999.

no debate on § 11 on Second Reading, it was approved as part of the article.⁵⁸¹ SDS merely clarified the language in its second redraft.⁵⁸²

By Third Reading of the proposed constitution, it became clear that SDS's transformation of a "regular" election into a "general" one caused a conflict with the use of "general election" in other parts of the constitution. During the Third Reading of Article III, there was a confusing debate on whether "general election" should be defined and, if so, whether it should have the same meaning in Article VII as it did in other parts of the constitution.⁵⁸³ Parkhurst stated that the legislature ought to determine what a "general election" was for purposes of Article VII.⁵⁸⁴ Eventually the weary delegates added a new § 6 to Article III which defined "general election" for all purposes except referenda in the Local Government article.⁵⁸⁵ In effect, the convention merely left the establishment of dates for local government referenda to the General Assembly.⁵⁸⁶ Section 11 was then adopted as part of the final article on Third Reading.⁵⁸⁷

Section 12. *Implementation of Governmental Changes*

Section 12 merely mandates the General Assembly to enact statutes providing for the orderly rearrangement of fiscal and administrative matters when units of local government are restructured. For example, rearrangements must be made whenever two governments are merged or whenever one is dissolved.⁵⁸⁸

Section 12 originated in § 13 of the Local Government committee report.⁵⁸⁹ The present section is essentially identical to the one proposed.⁵⁹⁰ In its report, the committee said

581. *Verbatim Transcripts*, vol. V at 4207-08.

582. *Comm. Proposals*, vol. VII at 2479, 2565-66.

583. *Id.* at 4297-98, 4543-44.

584. *Id.* at 4543.

585. The result is a combination of the adoption of Amend. No. 1 (Whalen), *Verbatim Transcripts*, vol. V at 4543-44; and Amend. No. 2 (Elward), *id.* at 4544-45.

586. See Parkhurst's remarks, *id.* at 4543.

587. *Id.* at 4527-28. The Address to the People does not mention § 11, but the Official Explanation states:

This section is new. Whenever this article requires a referendum, it may be initiated by a resolution of the governing body of that local government or by petition of the people.

Comm. Proposals, vol. VII at 2731.

588. See ILL. CONST. art. VII, § 12 (1970).

589. Perhaps *Member Proposals* 279 and 292 (Cicero) were the inspiration for the committee proposal. See *Comm. Proposals*, vol. VII at 2966, 2970-71.

590. See *Comm. Proposals*, vol. VII at 1588. The section read:

The General Assembly shall provide by general law for the transfer

that it regarded as inadequate the existing scattered constitutional and statutory provisions on orderly restructuring. The absence of an orderly, equitable transition process for powers, functions, assets and liabilities, especially debt obligations, was a major obstacle to the merging of local governments and to the reduction of the number of single-purpose districts. For example, holders of local government bonds and employees with vested pension rights have contractual obligations which cannot be impaired.⁵⁹¹

The purpose of the committee proposal was to give the legislature a constitutional basis and guide to enacting legislation on this complex but vital problem. The committee also hoped this mandate would encourage the General Assembly to act.⁵⁹²

When Delegate Wenum presented the section on First Reading, he summarized the committee report and suggested that the section was really a "contract clause," comparable to those in the United States and Illinois constitutions.⁵⁹³ Wenum suggested that the clause would protect creditors of a local government. The section was adopted without debate.⁵⁹⁴

Following minor stylistic changes made by SDS⁵⁹⁵ the section was adopted without debate as part of the article on Second Reading.⁵⁹⁶ SDS made a small change in its second redraft,⁵⁹⁷ and the convention adopted § 12 as part of the final article on Third Reading.⁵⁹⁸

of assets, powers, and functions, and for the payment of outstanding debt in the formation, consolidation, merger, division, dissolution, and change in the corporate boundaries of units of local government.

591. By the terms of the Illinois Constitution, members of local government retirement systems have contract rights in their pensions which also cannot be impaired. See ILL. CONST. art. XIII, § 5 (1970). See also, Comment, *Public Employee Pension Rights and the 1970 Illinois Constitution: Does Article XIII, Section 5 Guarantee Increased Protection?*, 9 J. MAR. J. 440 (1976).

592. *Comm. Proposals*, vol. VII at 1757-58. The committee vote was 14-0 with one absent, *id.* at 1851. There were no minority reports or dissents. See also the arguments over the proposed "General Structures Commission," which the convention rejected. Both proposals addressed the same reorganization problems, but the rejected § 10 of the majority proposal established a specific agency to oversee reorganization, whereas the adopted § 12 leaves the specific means of solving reorganization problems to the General Assembly. See discussion of rejected § 10 in text accompanying notes 94-104 *supra*.

593. See U.S. CONST. art. I, § 10; see also ILL. CONST. art. I § 16 (1970).

594. *Verbatim Transcripts*, vol. IV at 3431-32. The vote was 61-0.

595. See *Comm. Proposals*, vol. VII at 1962, 1978.

596. *Verbatim Transcripts*, vol. V at 4207-08.

597. *Comm. Proposals*, vol. VII at 2479-80, 2566.

598. *Verbatim Transcripts*, vol. V at 4527-28. The Address to the People does not mention the section, but the official explanation of § 12 states: "This new section requires the General Assembly to provide the appropriate administrative and financial adjustments when the form or boundaries of local governments are changed." *Comm. Proposals*, vol. VII at 2731.

CONCLUSION

By the mid-1960's it was clear to most observers that the 1870 Constitution, which had been written when Illinois was largely an agrarian state, hindered almost all efforts to modernize Illinois local governmental structure to meet contemporary problems. In particular, the constitution was not flexible enough to enable urban residents to solve the growing problems confronting most cities and the Chicago metropolitan area. One of the goals of the 1969-1970 Illinois Constitutional Convention was to draft a cohesive, workable constitutional basis for local governmental reform.

The convention's Local Government committee proposed a Local Government article which facilitated the modernization of all types of local government and the more efficient delivery of public services. The committee proposal generally strengthened all counties and cities, but its most innovative provision was the constitutional grant of home rule powers. This provision, which was the committee's chief attempt to solve the urban crisis, was one of the most volatile issues of the convention. Throughout the debate on home rule, the delegates strove to effect a home rule section which would satisfy the disparate factions in the convention and would be acceptable to the voters.

As a result of the compromises, Chicago and the larger cities received home rule powers automatically, while other municipalities could obtain them by referendum. Additionally, while the home rule powers granted are probably stronger than those in any other state constitution, the convention purposely left the most controversial powers, such as the power to impose an income tax, outside the scope of the grant. The delegates also achieved a delicate compromise on "preemption"—that power to regulate home rule which is retained by the legislature.

After five years it is possible to make a few observations about the development and results of the new article. First, the mayors of home rule cities and officers of other local governments with increased powers have discovered that their new powers to solve local problems impose a positive duty to implement solutions to those problems. Officials who long deplored the restrictions of "Dillon's Rule" and the failure of the legislature to solve local problems now find that "the buck stops" at their desks. The shift in power is requiring a change in attitudes.

Second, local governments have barely begun to utilize the new tools given them to improve the delivery of public services. The convention hoped that local governments would use their powers to cooperate with other governments, to impose differential taxes and special assessments, and to restructure their forms

of government in order to consolidate and modernize their functions. Although a few creative communities have pooled their resources to provide better services more economically, notably by intergovernmental cooperation, as yet most have continued old approaches to old problems.

Finally, most observers who have worked closely with the article are surprisingly pleased with it and optimistic about its future. The article is not perfect and everyone has suggestions about how it could be improved. On the whole, however, it is a remarkable document and probably the best that could have been written and *adopted*. Indeed, the timing was miraculous. In 1970 the country was less pessimistic about the ability of government to solve urban problems and about the integrity and competence of public officials than it is today. If New York City had been teetering on the brink of bankruptcy in 1969, the Illinois voters would almost certainly have rejected liberalized revenue powers for cities in 1970.

When one considers how much could have gone wrong, and how easily, it does indeed seem a miracle that the article is as good as it is. To paraphrase Dr. Johnson, the wonder is not that it is no better, the wonder is that it exists at all.

HOW TO USE THESE APPENDICES AND THE RECORD OF PROCEEDINGS

The seven volumes comprising the Official RECORD OF PROCEEDINGS of the SIXTH ILLINOIS CONSTITUTIONAL CONVENTION are indispensable to the student of the 1970 Illinois Constitution. Volume I contains the convention's *Daily Journal*. Volumes II through V contain both the *Verbatim Transcripts*, which are the record of the floor proceedings, and an Index to the *Verbatim Transcripts*. Volumes VI and VII are the *Committee Proposals*, which contain all the reports of committees, the Official Explanation of each section of the constitution, the Address to the People and the *Member Proposals*.

The pages are not numbered consecutively throughout the volumes. The *Daily Journal* begins with page one and ends with page 921; the *Verbatim Transcripts* begin with another page one in Volume II and continue through page 4768 in Volume V; and the *Committee Proposals* begin renumbering in Volume VI.

Anyone researching a problem covered by the Local Government article should follow these steps:

1. *Determine which provisions are applicable to your problem.* Often more than one section of the constitution or even more than one section of the Local Government article will help solve

a particular question. Some provisions of the constitution, such as the Bill of Rights or the Suffrage and Elections article, bind local governments as well as the state. Certain provisions are especially important to the local government lawyer. For example:

Taxation— The Finance article (Article VIII) and the Revenue article (Article IX) both affect local governmental revenue and expenditures.

Legislation on Local Governments— Article IV, Section 13 prohibits special legislation, including special legislation on local government problems.

Local Officers— Neither clerks of the circuit court (Article VI, Section 18) nor State's Attorneys (Article VI, Section 19) are "officers of units of local government." However, many local government issues involve these officers and you should be aware of their constitutional status. Article XIII, Section 2 allows the legislature to require all local officers to file statements of economic interest.

2. *Read the history and purpose of the section affecting your problem.* Thorough research demands the ascertaining of changes made at each stage of the writing of the section. APPENDIX B, which is a chart of the development of each section, is divided into eight columns for quick reference.

Column 1 — Enables you to find the exact section or subsection of Article VII and gives cross-references to other related sections.

Column 2 — Helps you find any *Member Proposals* which may have inspired the section. APPENDIX A is a chart on the *Member Proposals* relating to local government issues and is valuable if you have the time to delve into the background of a section deeply. The full texts of all the *Member Proposals* are in Volume VII of the PROCEEDINGS.

Column 3 — Contains the key to the majority report of the Committee on Local Government, highlighting the section or sections of the majority proposal which were the genesis of the section you are researching.

Column 4 — Contains the key to any minority reports or dissents to the section proposed by the majority. The majority and minority reports and dissents are found in Volume VII of the PROCEEDINGS.

Column 5 — Indicates where you can find First Reading of the section on the floor of the convention. First Reading is in Volume IV of the PROCEEDINGS.

Column 6 — Indicates where you can find the first draft of the section made by the Committee on Style, Drafting and Submission after First Reading. SDS Report No. 13 is in Volume VII. It also tells you where you can find Second Reading of the section on the floor. Second Reading is in Volume V.

Column 7 — Indicates where you can find SDS's second redraft of the section, which is in Volume VII. It also tells you where to find Third Reading and Final Adoption of the section in Volume V.

Column 8 — Locates the Official Explanation of the section and references to the section in the Address to the People. Both are in Volume VII.

4. *Read the background materials and published literature on the topic addressed by the section.* Some readers may want to consult primary sources and commentaries on a topic. If you are interested in pre-1969 local government in Illinois, you should read Part I of this study. If you are interested in the development of the whole Local Government article at the convention, you ought to read Part II of this study. APPENDIX C is a selected bibliography of both the primary sources and major commentaries on the Local Government article, local government in Illinois and on the 1969-70 Constitutional Convention which were consulted by the authors. It is arranged in parts corresponding to the parts of this study for easy reference.

5. *Read the reported case on the section.* Court decisions are the final interpretation of a section. Consult the Smith-Hurd Annotated edition of the 1970 Constitution for the latest decisions and law review articles on the section.

APPENDIX A

MEMBER PROPOSALS SUBMITTED AT BEGINNING OF
CONSTITUTIONAL CONVENTION*Data on Member Proposals*

| | |
|---|-----|
| Total Member Proposals Submitted | 582 |
| Local Government Member Proposals Submitted (23%) | 135 |
| Member Proposals Assigned to Local Government Committee | 49 |
| Distribution of Local Government Member Proposals: | |

| Topic Area | Number of Proposals | Number Assigned |
|------------------------|---------------------|-----------------|
| Revenue | 62 | 9 |
| Officers and Structure | 52 | 34 |
| General | 21 | 6 |
| | <hr/> | <hr/> |
| Total | 135 | 49 |

Largest Areas of Concern:*

| | |
|--|----|
| Property Taxes | 26 |
| County Government (Officers and Structure) | 27 |

* This reflects general dissatisfaction with two of the basic aspects of the 1870 Illinois Constitution—the county as the basic form of local government and the ad valorem general property tax as the basic source of local revenue.

The following is a listing of local government member proposals by topic and sub-topic area. The asterisks (*) indicate member proposals actually assigned to the Local Government committee. A summary of the member proposals assigned to the Committee on Local Government is found at RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, *Committee Proposals*, vol. VII at 1818-26 (1969-70) and the full text of the member proposals is at *id.*, 2843-3112.

REVENUE

I. *Generally*

Tax Structure: 28, 33, 76, 143, 282, 358, 422, 430, 444, 474
 Revenue Sharing: 5*, 60, 79*, 145*, 525
 Tax Exemptions: 533, 555
 School Financing: 32, 439, 519
 Local Government Fiscal/Budget: 154, 156
 Miscellaneous: 211, 442, 501, 531

II. *Property Taxes*

Generally and Miscellaneous (including exemptions):
 48, 86, 88, 210, 229, 240, 322, 340, 413
 Personal Property Tax: 3, 18, 138, 147, 209
 Real Property Tax (including classes and exemptions):
 137, 228, 484, 493, 508, 512, 534, 560, 579
 Special Taxes and Assessments: 135*, 515*, 532

III. *Local Debt*: 136*, 163, 184, 200, 305*, 343*, 412*, 428, 572, 536

OFFICERS AND STRUCTURE

I. *Generally*

Local Government Rearrangements: 44*, 279*, 292*,
293*, 372*, 377*

Home Rule: 75*, 98*, 144*, 408*, 414*, 527*, 541*

Officers: 16, 77, 268, 538, 550

Employees: 249, 397, 405

Miscellaneous: 472*, 489

II. *Municipalities*: 393*, 398*III. *Counties*

County Officers, Generally and Miscellaneous: 7*, 10, 42*, 46,
94*, 96*, 122*, 354*, 378*, 392*, 416*, 473*, 503*

County Fee Officers: 22*

Coroners: 85, 177

Multi-County Officers (including State's Attorneys):
109*, 110, 424

Treasurer: 142*

County Superintendent of Schools: 476

Custody of County Courthouse: 552*, 577*

Cook County Government: 57*, 314*, 378, 507*

GENERAL

I. *Local Government Article*: 454*II. *Intergovernmental Cooperation*: 30*, 175*, 223, 294, 309, 373*III. *Elections*: 371, 478, 523IV. *Health Care and Standards*: 404, 448, 566V. *Local Conservation*: 74, 92VI. *Miscellaneous*: 13, 78, 504, 374*, 375, 529*

APPENDIX B
HISTORY OF ARTICLE VII

Rejected Sections

| REJECTED SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|--|---|--|---|
| Committee Proposal §1 "Purpose and Construction" (See also §6(m)) | ————— | C.P., vol. VII at 1576, 1592-94 (Maj. Rpt. § 1) | C.P., vol. VII at 1857-59 (Min. Rpt. 1A) Dissents: C.P., vol. VII at 1775, 1776 (Butler, Dunn) |
| Committee Proposal §10 "General Structures Commissions" (See also §12) | M.P. 529-Stahl, C.P., vol. VII at 3083. | C.P., vol. VII at 1585, 1586, 1728-46 (Maj. Rpt. § 10) | C.P., vol. VII at 1933-38 (Min. Rpt. 1L) Dissents: C.P., vol. VII at 1799 (Dunn), 1800-01 (Butler) |

Adopted Sections

| PRESENT SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|---|---|---|--|
| 1. "Municipalities and Units of Local Government" | ————— | C.P., vol. VII at 1576-77, 1595-98 (Maj. Rpt. §2 "Definitions"). | C.P., vol. VII at 1861-64 (Min. Rpt. #1B); withdrawn on First Reading, V.T., vol. IV at 3038. Dissent: C.P., vol. VII at 1777-78 (Butler, Dunn) |
| 2. "County Territory, Boundaries and Seats" | M.P. 96—Lewis, C.P., vol. VII at 2888; M.P. 378—Woods, C.P., vol. VII at 3009. | C.P., vol. VII at 1581, 1689-92 (Maj. Rpt. §5 "County Territory, County Boundaries, and County Seats"). | ————— |
| 3. "County Boards" | Generally, C.P., vol. VII M.P. 57-Borek at 2874 M.P. 314-Reum at 2980; M.P. 378-Woods at 3009; M.P. 472-Perona at 3059; M.P. 473-Perona at 3059. | C.P., vol. VII at 1582-83, 1693-1701 (Maj. Rpt. §6 "County Boards"). | C.P., vol. VII at 1917-22 (Min. Rpt. #1I); withdrawn on First Reading, V.T., vol. IV at 3244. |

Rejected Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|--|--|---------------|-------------------------|
| V.T., vol. IV at 3025, 3028, 3032-38; deleted: 3038. | _____ | _____ | _____ |
| V.T., vol. IV at 3025, 3027, 3029, 3449-78; deleted: 3478. | Proposed Amendment to add a "Local Government Commissions" section: V.T., vol. V at 4195-98, 4207; defeated: 4198. | _____ | _____ |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|---|---|---|---|
| V.T., vol. IV at 3025, 3028, 3032-33, 3037-38; adopted 3038. | C.P., vol. VII at 1954, 1965, 1979-80; not debated on floor; adopted V.T., vol. V at 4207-08. | C.P., vol. VII at 2470, 2556, 2603; V.T., vol. V at 4247; adopted 4527-28. | C.P., vol. VII at 2724 (explanation). (The entire article is discussed in the Address to the People, C.P., vol. VII at 2675.) |
| V.T., vol. IV at 3027, 3224-26; adopted 3226. | C.P., vol. VII at 1954, 1966, 1980; not debated on floor; adopted V.T., vol. V at 4207-08. | C.P., vol. VII at 2470, 2556; not debated on floor; adopted V.T., vol. V at 4527-28. | C.P., vol. VII at 2724 (explanation). |
| V.T., vol. IV at 3027, 3029, 3148-50, 3226-52, 3263-65; adopted 3252. | C.P., vol. VII at 1954-55, 1966-68, 1980-83; debated on floor, V.T., vol. V at 4151-55; adopted at 4207-08. | C.P., vol. VII at 2470-71, 2556-57, 2604; debated V.T., vol. V at 4247, 4249-51, 4253, 4447-49; adopted at 4527-28. | C.P., vol. VII at 2724-25 (explanation). |

Adopted Sections (cont'd)

| PRESENT SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|--|---|---|--|
| 4. "County Officers" | <i>Generally</i> , C.P., vol. VII: M.P. 7-Knuppel at 2845; M.P. 85-Lewis at 2884; M.P. 94-Miska at 2887; M.P. 109-Lewis at 2893-94; M.P. 122-Gertz at 2898; M.P. 142-Dunn at 2905; M.P. 177-Leahy at 2921; M.P. 503-Hendren at 3068; M.P. 507-Daley at 3069-70; M.P. 552-R. Johnsen at 3093; M.P. 577-Durr at 3103. | C.P., vol. VII at 1583-84, 1702-11 (Maj. Rpt. §7 "County Officers"); and at 1579, 1665-68 (Maj. Rpt. §4.3). | C.P., vol. VII at 1923-27 (Min. Rpt. 1J to § 7.1); (Min. Rpt. 1K to §7.2) at 1929-32 <i>Dissents to § 7.1:</i> C.P. vol. VII at 1795 (Butler) and 1796-97 (Zeglis). |
| 5. "Townships" | M.P. 42-Canfield, C.P., vol. VII at 2868. | C.P., vol. VII at 1584, 1712-16 (Maj. Rpt. §8 "Townships"). | <i>Dissent to §8.3:</i> C.P., vol. VII at 1798 (Butler). |
| 6a.) Grant of Power | <i>Generally</i> , C.P., vol. VII: M.P. 75-Netsch at 2880-81; M.P. 98-Woods at 2889-90; M.P. 144-Zeglis at 2909; M.P. 408-Rachunas at 3021; M.P. 414-Anderson at 3023; M.P. 527-Butler at 3081; M.P. 541-R. Johnsen at 3089. | <i>Generally</i> , C.P., vol. VII at 1577-79, 1599-1657 (Maj. Rpt. § 3); <i>Specifically</i> , C.P., vol. VII at 1577, 1616-37 (Maj. Rpt. §3.1a). For sentence on home rule by referendum, <i>see</i> subsection (b) <i>infra</i> . | C.P., vol. VII at 1865-73 (Min. Rpt. 1C in part); C.P., vol. VII at 1897-1905 (Min. Rpt. 1F); <i>Separate statement</i> , C.P., vol. VII at 1890-91 (Keegan); <i>Dissent:</i> C.P., vol. VII at 1779 (Butler) and 1780 (Zeglis). |
| 6b.) Referendum to terminate Municipal Home Rule | ————— | C.P., vol. VII at 1577-78, 1636-37 (Maj. Rpt. §3.1b) | C.P., vol. VII at 1865-79 (Min. Rpt. 1C in part). |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|---|--|--|--|
| V.T. vol. IV at 3024-25, 3027, 3029, 3148-50, 3240-44, 3252-83, 3285-3303, 3363-65; <i>adopted</i> 3283, 3296, 3303-04. | C.P., vol. VII at 1955-56, 1968-69, 1983-85; debated on floor, V.T., vol. IV at 4151, 4155-65; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2471-72, 2557-58; debated V.T., vol. V at 4247; <i>adopted</i> V.T., vol. V at 4527-28. | C.P., vol. VII at 2725-26 (explanation). |
| V.T., vol. IV at 3025, 3027, 3392-3403; <i>adopted</i> 3403. | C.P., vol. VII at 1956-57, 1969-70, 1985-86; not debated on floor; <i>adopted</i> V.T., vol. V at 4207-08. | C.P., vol. VII at 2473, 2559; debated V.T., vol. V at 4247; <i>adopted</i> V.T., vol. V at 4527-28. | C.P., vol. VII at 2726 (explanation). |
| V.T., vol. IV at 3022-26, 3028, 3038-84, 3166-67, 3316-25; <i>adopted</i> 3325. | C.P., vol. VII at 1958, 1971, 1987, 1990; V.T., vol. V at 4165-67, 4181; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2473, 2559; debated V.T., vol. V at 4247, 4443, 4446, 4451; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2727-28 (explanation). |
| V.T., vol. IV at 3026, 3028, 3045-48, 3083-85, 3325-26; <i>adopted</i> 3326. | C.P., vol. VII at 1958, 1972, 1987, 1990-91; Apparently no debate on Second Reading; <i>adopted</i> V.T., vol. V at 4207-08. | C.P., vol. VII at 2473, 2559; debated V.T., vol. V at 4247, 4249, 4443, 4446, 4451; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2728 (explanation). |

Adopted Sections (cont'd)

| PRESENT SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|--|------------------|--|---|
| 6c.) Conflict between a city and a home rule county | ————— | C.P., vol. VII at 1578, 1602, 1646-50 (Maj. Rpt. §3.3) | ————— |
| 6d.) Debt and felonies | ————— | (1) <i>Debt</i> : C.P., vol. VII at 1581, 1677, 1680-88 (Maj. Rpt. §4.8) (2) <i>Felony</i> : C.P., vol. VII at 1579, 1650-51 (Maj. Rpt. §3.4) | ————— |
| 6e.) Imprisonment; licensing for revenue; taxes on income, earnings or occupations | ————— | Imprisonment: None, but see §6(d)(2) <i>supra</i> . <i>Licensing for Revenue</i> : C.P., vol. VII at 1580, 1673-75 (Maj. Rpt. §4.5) <i>Taxes</i> : C.P., vol. VII at 1579-80, 1669-73 (Maj. Rpt. §4.4) | <i>Imprisonment: Licensing for Revenue</i> : C.P., vol. VII at 1865-69, 1873-79 (Min. Rpt. 1C in part); <i>Dissents</i> : Keegan at 1788-90; Dunn at 1787. <i>Taxes</i> : C.P., vol. VII at 1913-15 (Min. Rpt. 1H); <i>Dissents</i> : Keegan at 1783-86; Dunn at 1787; and Borek, Butler & Zeglis at 1782. |
| 6f.) Form of government | ————— | C.P., vol. VII at 1579, 1665-69 (Maj. Rpt. §4.3) | ————— |
| 6g.) Preemption: tax; denial or limitation | ————— | C.P., vol. VII at 1578, 1637-42, 1646 (Maj. Rpt. §3.2(a)). | C.P., vol. VII at 1881-89 (Min. Rpt. 1D); <i>separate statement</i> : C.P., vol. VII at 1890-91 (Keegan); <i>Dissent</i> : C.P., vol. VII at 1781 (Butler). |
| 6h.) Preemption: exclusive exercise by state | ————— | C.P., vol. VII at 1578, 1637-39, 1642-46 (Maj. Rpt. §3.2(b)). | C.P., vol. VII at 1881-89 (Min. Rpt. 1D); <i>separate statement</i> : C.P., vol. VII at 1890-91 (Keegan) |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|---|---|--|--|
| V.T., vol. IV at 3026, 3048-50, 3072-75, 3119-25, 3139-40, 3361-62; adopted 3360. | C.P., vol. VII at 1958, 1972, 1988; Apparently no debate on Second Reading; adopted V.T., vol. V at 4207-08. | C.P., vol. VII at 2473, 2559-60; debated V.T., vol. V at 4452-53; adopted at 4527-28. | — |
| Debt: V.T., vol. IV at 3027, 3199-3201, 3218-20, 3386-92; adopted 3392. Felony: V.T., vol. IV at 3026, 3125-38, 3360-61; adopted 3361. | Debt: C.P., vol. VII at 1959, 1972, 1988, 1991; adopted V.T., vol. V at 4207-08. Felony: C.P., vol. VII at 1958, 1972, 1988, 1991; adopted V.T., vol. V at 4207-08. | Debt: C.P., vol. VII at 2474, 2560, 2604; V.T., vol. V at 4247, adopted at 4527-28. Felony: C.P., vol. VII at 2474, 2560, 2604; V.T., vol. V at 4247, adopted at 4527-28. | Felony: C.P., vol. VII at 2728 (explanation). |
| Imprisonment: V.T., vol. IV at 3125-38, 3360-61; adopted 3361. Licensing for Revenue: V.T., vol. IV at 3026, 3151-55, 3187-99, 3283, 3304-14, 3371-74; adopted 3374. Taxes: V.T., vol. IV at 3026, 3028-29, 3091-93, 3150-80, 3184-87, 3191, 3196, 3365-71; adopted 3371. | Imprisonment: C.P., vol. VII at 1958, 1972, 1988, 1991; adopted V.T., vol. V at 4207-08. Licensing for Revenue: C.P., vol. VII at 1958, 1972, 1988, 1991; V.T., vol. V at 4168-69; adopted V.T., vol. V at 4207-08. Taxes: C.P., vol. VII at 1958, 1972, 1988, 1991; debated on floor V.T., vol. V at 4167-69; adopted 4207-08. | Imprisonment: C.P., vol. VII at 2474, 2560, 2604; V.T., vol. V at 4247; adopted at 4527-28. Licensing for Revenue: C.P., vol. VII at 2474, 2560, 2604; V.T., vol. V at 4247, 4527; adopted at 4527-28. Taxes: C.P., vol. VII at 2474-75, 2560, 2604; V.T., vol. V at 4247, 4527; adopted at 4527-28. | Imprisonment: None. Licensing for Revenue: C.P., vol. VII at 2728 (explanation). Taxes: C.P., vol. VII at 2728 (explanation) |
| V.T., vol. IV at 3025-26, 3148-50, 3253-54, 3286-91, 3363-65; adopted 3365. | C.P., vol. VII at 1959, 1972, 1988; V.T., vol. V at 4189-90; adopted 4207-08. | C.P., vol. VII at 2475, 2561, 2604; V.T., vol. V at 4250, 4252-53, 4447-49; adopted 4527-28. | C.P., vol. VII at 2675 (address). |
| V.T., vol. IV at 3026, 3028, 3042-43, 3052-60, 3086-3105, 3108-11, 3116-18, 3123, 3218, 3326-56, 3360; adopted V.T., vol. IV at 3360. | C.P., vol. VII at 1959, 1972, 1988; V.T., vol. V at 4174-75; adopted V.T., vol. V at 4207-08. | C.P., vol. VII at 2475, 2561; debated on floor, V.T., vol. V at 4247, 4449-50; adopted V.T., vol. V at 4527-28. | C.P., vol. VII at 2675 (address); 2728 (explanation). |
| V.T., vol. IV at 3052-60, 3089-3105, 3108-12, 3116-19, 3123, 3326-56, 3359-60; adopted V.T., vol. IV at 3360. | C.P., vol. VII at 1959, 1973, 1989; V.T., vol. V at 4169-74; adopted V.T., vol. V at 4207-08. | C.P., vol. VII at 2475, 2561; debated on floor, V.T., vol. V at 4247, 4254, 4449-50, 4453-54; adopted V.T., vol. V at 4527-28. | C.P., vol. VII at 2675 (address). |

Adopted Sections (cont'd)

| PRESENT SUBSECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|---|---|---|--|
| 6i.) Preemption: concurrent exercise | ————— | C.P., vol. VII at 1578, 1637-39, 1642-46 (Maj. Rpt. §3.2(c)). | C.P., vol. VII at 1893-96 (Min. Rpt. 1E); <i>separate statement</i> : C.P., vol. VII at 1890-91 (Keegan) |
| Deleted: Maj. Proposal §3.2(d) "Standards and Procedures" | ————— | C.P., vol. VII at 1578, 1637-39, 1645-46 (Maj. Rpt. §3.2(d)). | C.P., vol. VII at 1907-11 (Min. Rpt. 1G); <i>separate statement</i> : C.P., vol. VII at 1890-91 (Keegan) |
| 6j.) Limits on amount of debt | ————— | C.P., vol. VII at 1581, 1677, 1679-88 (Maj. Rpt. §4.7) | None (<i>But see</i> C.P., vol. VII at 1943-50, Min. Rpt. 1N, which made a technical change in §4.7 in order to amend §4.6). |
| 6k.) Limits on amount of municipal debt payable from ad valorem property tax receipts | C.P., vol. VII, M.P. 412-Yordy at 3022. | C.P., vol. VII at 1580-81, 1676-88 (Maj. Rpt. §4.6). | C.P., vol. VII at 1943-50 (Min. Rpt. 1N); <i>dissents</i> : (<i>generally for this section</i> , C.P., vol. VII); Butler at 1791; Borek & Zeglis at 1792; Dunn at 1793; and Keegan at 1794. |
| 6l.) Special assessments and differential taxation | <i>Generally</i> , C.P., vol. VII: M.P. 135-A. Lennon at 2903; M.P. 515-Downen at 3076. | <i>Special Assessments</i> -C.P., vol. VII at 1579, 1658-62 (Maj. Rpt. §4.1). <i>Differential taxation</i> -C.P., vol. VII at 1579, 1662-65 (Maj. Rpt. §4.2). | ————— |
| 6m.) Liberal construction (<i>See also</i> Rejected Committee Proposal §1) | ————— | C.P., vol. VII at 1576, 1592-94 (Maj. Rpt. §1 (in part)). | None (<i>But see</i> C.P., vol. VII at 1857-59, (Min. Rpt. 1A) and the <i>dissents</i> of Butler at 1775 and Dunn at 1776 which were not responsive to this sentence). |
| 7(1) Special assessments | <i>Generally</i> , C.P., vol. VII: M.P. 135-A. Lennon at 2903; M.P. 515-Downen at 3076. | C.P., vol. VII at 1579, 1658-62 (Maj. Rpt. §4.1) | ————— |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|--|---|---|---|
| V.T., vol. IV at 3042-43, 3052-60, 3093, 3101, 3109-12, 3116-19, 3167, 3326-56, 3358-60; <i>adopted</i> 3360. | C.P., vol. VII at 1959, 1973, 1989; V.T., vol. V at 4169-74; <i>adopted</i> V.T., vol. V at 4207-08. | C.P., vol. VII at 2475, 2561; debated on floor, V.T., vol. V at 4247; <i>adopted</i> V.T., vol. V at 4527-28. | C.P., vol. VII at 2675 (address). |
| V.T., vol. IV at 3052-60, 3091, 3112-19; <i>deleted</i> 3118-19. | V.T., vol. V at 4177-81, 4191-94, 4207; <i>defeated</i> : 4194. | — | — |
| (§ 4.7) V.T., vol. IV at 3027, 3199-3217, 3380-86; <i>adopted</i> at 3386. | C.P., vol. VII at 1959, 1973, 1989, 1991; not debated on floor; <i>adopted</i> at V.T., vol. V at 4207-08. | C.P., vol. VII at 2476, 2562; debated on floor V.T., vol. V, at 4248, 4451-52; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2728 (explanation). |
| (§ 4.6) V.T., vol. IV at 3199-3217, 3375-80; <i>adopted</i> at 3380. | C.P., vol. VII at 1959-60, 1973-74, 1989-92; debated on floor V.T. vol. V at 4175-77, 4181-82, 4185-86, 4188-89, 4200-06; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2476, 2562; debated on floor V.T. vol. V at 4451-52; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2728 (explanation). |
| <i>Special assessments</i> -V.T., vol. IV at 3024, 3026, 3041, 3141-45, 3362-63; <i>adopted</i> at 3363. <i>Differential taxation</i> -V.T., vol. IV at 3024, 3026, 3145-48, 3363; <i>adopted</i> at 3363. | Both <i>Special assessments</i> and <i>Differential taxation</i> omitted; debated on floor: <i>Special assessments</i> -V.T., vol. V at 4186-88; <i>adopted</i> at 4207-08. <i>Differential taxation</i> -V.T., vol. V at 4186-88, 4191; <i>adopted</i> at 4207-08. | <i>Generally</i> , for both <i>Special assessments</i> and <i>Differential taxation</i> : C.P., vol. VII at 2475, 2560-61, 2604; debated on floor V.T., vol. V at 4247-49, 4251-52, 4449-50; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2675 (address). |
| V.T., vol. IV at 3032-38, 3138-39; <i>adopted as additional section</i> at 3139. | C.P., vol. VII at 1960-61, 1974-75, 1990, 1993; debated on floor V.T., vol. V at 4190-91; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2476, 2562; debated on floor V.T., vol. V at 4244-50; <i>adopted</i> at 4527-28. | — |
| V.T., vol. IV at 3024, 3026, 3041, 3141-45, 3362-63; <i>adopted</i> at 3363. | C.P., vol. VII at 1960, 1974, 1992-93; not debated on floor; <i>adopted</i> at V.T., vol. V at 4207-08. | C.P., vol. VII at 2476-77, 2563, 2604; debated on floor V.T., vol. V at 4248, 4251-52; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2675 (address); C.P., vol. VII at 2729 (explanation). |

Adopted Sections (cont'd)

| PRESENT SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|---|---|---|--|
| 7(2) Forms of government | _____ | C.P., vol. VII at 1579, 1665-67 (Maj. Rpt. §4.3) | _____ |
| 7(3) Municipal Officers | _____ | C.P., vol. VII at 1579, 1665-69 (Maj. Rpt. §4.3) | _____ |
| 7(4) County officers | _____ | C.P., vol. VII at 1579, 1665-69 (Maj. Rpt. §4.3) | _____ |
| 7(5) Debt limit | _____ | C.P., vol. VII at 1581, 1677-80 (Maj. Rpt. §4.8) | _____ |
| 7(6) Differential Taxation | _____ | C.P., vol. VII at 1579, 1662-65 (Maj. Rpt. §4.2) | _____ |
| 8. Powers and Officers of School Districts and Units of Local Government Other than Counties and Municipalities | <i>Special assessments; Generally, C.P., vol. VII: M.P. 135-A. Lennon at 2903; M.P. 515-Downen at 3076.</i> | <i>Special assessments-C.P., vol. VII at 1579, 1658-62 (Maj. Rpt. §4.1); Debt Limit-C.P., vol. VII at 1581, 1677-80 (Maj. Rpt. §4.8); Officers of Units of Special Local Government-C.P., vol. VII at 1588, 1759-61 (Maj. Rpt. §14, "Officers of Units of Local Special Government").</i> | <i>Officers of Units of Special Local Government C.P., vol. VII at 1940-42 (Min. Rpt. 1M).</i> |
| 9. Salaries and Fees | C.P., vol. VII: M.P. 22-Friedrich at 2850. | C.P., vol. VII at 1584-85, 1717-27 (Maj. Rpt. §9, "Fees"). | _____ |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|---|--|--|--|
| V.T., vol. IV at 3025-26, 3148-50, 3363-65; <i>adopted</i> at 3365. | C.P., vol. VII at 1960, 1974, 1992-93; debated on floor V.T., vol. V at 4187; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2477, 2563; not debated on floor; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2729 (explanation). |
| V.T., vol. IV at 3025-26, 3148-49, 3363-65; <i>adopted</i> at 3365. | C.P., vol. VII at 1961, 1974, 1992-93; debated on floor V.T., vol. V at 4187; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2477-2563; not debated on floor; <i>adopted</i> at V.T., vol. V at 4527-28. | _____ |
| V.T., vol. IV at 3025-26, 3148-50, 3253-54, 3286-91; <i>adopted</i> at 3365. | C.P., vol. VII at 1961, 1974, 1992-93; debated on floor V.T., vol. V at 4187; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2477-2563; not debated on floor; <i>adopted</i> at V.T., vol. V at 4527-28. | _____ |
| V.T., vol. IV at 3027, 3199-3201, 3218-20, 3386-92; <i>adopted</i> at 3392. | C.P., vol. VII at 1961, 1974, 1992-93; debated on floor V.T., vol. V at 4186-88; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2477-2563; not debated on floor; <i>adopted</i> at V.T., vol. V at 4527-28. | C.P., vol. VII at 2729 (explanation). |
| V.T., vol. IV at 3024, 3026, 3145-48, 3363; <i>adopted</i> at 3363. | <i>Differential Taxation, omitted</i> ; debated on floor V.T., vol. V at 4186-88; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2477, 2563, 2604; debated V.T., vol. V at 4248-49, 4527; <i>adopted</i> at V.T., vol. V at 4527-28. | C.P., vol. VII at 2675 (address); at 2729 (explanation). |
| (§4.1) V.T., vol. IV at 3024, 3026, 3041, 3141-45, 3362-63; <i>adopted</i> at 3363; (§4.8) V.T., vol. IV at 3027, 3199-3201, 3218-20, 3386-92; <i>adopted</i> at 3392; (§14) V.T., vol. IV at 3028-29, 3432-48; <i>adopted</i> at 3448. | C.P., vol. VII at 1961-62, 1975, 1994-95; debated on floor V.T., vol. V at 4198-99; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2477-78, 2563-64, 2604; debated on floor V.T., vol. V at 4248, 4450-51; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2729 (explanation) at 2675 (address). |
| V.T., vol. IV at 3027, 3403-18; <i>adopted</i> at 3418. | C.P., vol. VII at 1957, 1970; debated on floor V.T., vol. V at 4157-58; <i>adopted</i> at 4207-08. | C.P., vol. VII at 2478, 2564; debated V.T., vol. V at 4248; <i>adopted</i> at V.T., vol. V at 4527-28. Transition schedule 1(b) <i>adopted</i> at V.T., vol. V at 4625-26. | C.P., vol. VII at 2730 (explanation). |

Adopted Sections (cont'd)

| PRESENT SECTION | MEMBER PROPOSALS | COMMITTEE MAJORITY REPORT | COMMITTEE MINORITY REPORT AND DISSENTS |
|---|---|--|--|
| 10. Intergovernmental Cooperation | <i>Generally</i> , C.P., vol. VII: M.P. 30-Stahl at 2853; M.P. 175-Leahy at 2920. | C.P., vol. VII at 1585-86, 1747-52 (Maj. Rpt. §11, "Intergovernmental Cooperation"). | _____ |
| 11. Initiative and Referendum | _____ | C.P., vol. VII at 1587-88, 1753-56 (Maj. Rpt. §12). | _____ |
| 12. Implementation of Governmental Changes (See also Rejected Committee Proposal §10) | <i>Generally</i> , C.P., vol. VII: M.P. 279-Cicero at 2966; M.P. 292-Cicero at 2970-71. | C.P., vol. VII at 1588, 1757-58 (Maj. Rpt. §13). | _____ |

Adopted Sections (cont'd)

| FIRST READING | SECOND READING | THIRD READING | ADDRESS AND EXPLANATION |
|--|---|--|--|
| V.T., vol. IV at 3024-25, 3027, 3421-31, <i>adopted</i> at 3431. | C.P., vol. VII at 1957-58, 1970-71, 1986-87; debated on floor V.T., vol. V at 4165; <i>adopted</i> at 4165. | C.P., vol. VII at 2478-79, 2565; debated on floor V.T. vol. V at 4248 4253, 4443-46; <i>adopted</i> at 4527-28. | <i>Generally</i> , C.P., vol. VII: at 2675 (address); at 2730 (explanation). |
| V.T., vol. IV at 3025, 3027-28, 3431; <i>adopted</i> at 3431. | C.P., vol. VII at 1962, 1978, 1998; not debated on floor; <i>adopted</i> at V.T., vol. V at 4207-08. | C.P., vol. VII at 2479, 2565-66; debated on floor V.T., vol. V at 4248, 4253; <i>adopted</i> at V.T., vol. V at 4527-28. | C.P., vol. VII at 2731 (explanation). |
| V.T., vol. IV at 3028, 3431-32; <i>adopted</i> at 3432. | C.P., vol. VII at 1962, 1978; not debated on floor; <i>adopted</i> at V.T., vol. V at 4207-08. | C.P., vol. VII at 2479-80; 2566; debated on floor V.T., vol. V at 4248; <i>adopted</i> at 4527-28. | C.P., vol. VII at 2731 (explanation). |

APPENDIX C

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