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# Municipal Crisis in Ohio

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# THE MUNICIPAL CRISIS IN OHIO

ON June 26th, 1902, the supreme court of Ohio rendered three decisions which precipitated a crisis in municipal affairs in that state. For, by these decisions, the court virtually overruled a long line of precedents, and laid down a principle under which scarcely a city in the state possessed a constitutional government. In consequence, the legislature was summoned in extraordinary session to enact a new municipal code for all the cities and villages in the state.

The situation was unparalleled, even in American history; and the task before the general assembly was doubtless the most important single act of municipal legislation that has come before an American legislature. An examination of the steps leading to the present situation, and of the measures taken to solve the difficulties should be of interest and significance.

To understand the present situation, it is necessary to begin with certain clauses in the second constitution of Ohio, adopted in 1851. Under the first constitution, there had been no restrictions on special legislation; and the misuse of its power by the legislature led to the adoption in the new instrument of three different provisions affecting municipal government:

> Art. II, Section 26. "All laws of a general nature shall have a uniform operation throughout the state."
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> Art. XIII, Sec. 1. "The legislature shall pass no special act conferring corporate powers."
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> Art. XIII, Sec. 6. "The general assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

In accordance with these provisions, the general assembly in 1852 enacted a general municipal corporations act,—the first of its kind in the United States—which repealed all of the special charters then in force. This act, however, divided such corporations into four classes: cities of the first class, with over 20,000 population; cities of the second class, with from 5,000 to 20,000 population; incorporated villages; and villages incorporated for special purposes. The idea of classifying municipal corporations had been suggested in the constitutional convention; and it was understood that laws applying to a class of cities met the constitutional requirements. Moreover, if the scheme of classification first adopted had

continued in force, there could have been little or no special legislation for particular cities. It is true that when the law of 1852 was enacted, Cincinnati was the only city in the first class; but during the following year Cleveland came into this class, and other cities would soon have further increased the number.

Almost at once, however, the general classification was amended by acts applying to cities within certain population limits other than those of the general law. By this means before 1860 special laws had been passed for Cincinnati and Cleveland; and after that date for many other cities and villages, which were thus each placed indirectly in a separate class for certain purposes. In 1878, a new municipal code was adopted with an intricate system of classification, which remained in force until overthrown by the recent decision of the supreme court. Cities of the first class were divided into three grades, with provision for a fourth grade. Cities of the second class were divided into four grades. Villages were divided into two classes. Under this scheme each of the five chief cities was in a grade by itself. But further refinements of classification followed. Grades in the second class were subdivided, until eleven cities had been isolated, each into a grade by itself; while still further specialization was introduced by passing acts with particular population formulas which applied usually to only a single city. Moreover, hundreds of acts[1] have been passed conferring powers on particular municipal corporations *by name*.

Most of this municipal legislation went into effect without any attempt to test its constitutionality, but when cases were brought before the courts, all but the most flagrant cases were upheld. In 1868, the supreme court decided that an act conferring powers upon cities of the first class, with less than 100,000 population at the last federal census, had a uniform operation throughout the state, although there was but one city in the class.[2] Other acts were held to be constitutional on other points, without considering the clauses here under discussion.[3] By this process the way was paved for the broad declaration, that "under the power to organize cities and villages, the general assembly is authorized to classify municipal corporations, and an act relating to any such class may be one of a

[1] There were 1202 from 1876 to 1892. Wilcox, Municipal Government in Michigan and Ohio, p. 79.

[2] Welker *v.* Potter, 18 Ohio St. 85.

[3] Walker *v.* Cincinnati, 21 Ohio St. 14.

general nature."[1] On the other hand, statutes naming particular cities were held to be unconstitutional,[2] as was also an act applying to "cities of the second class having a population of over 31,000 *at the last federal census*," on the ground that Columbus was the only city to which the law could ever apply.[3]

At length, in the case of *State* v. *Pugh*,[4] the supreme court defined its views more fully in these words:—

> "It is not to be urged against legislation, general in form, concerning cities of a designated class or grade, that but one city in the state is within the particular classification at the time of the enactment. Nor is it fatal to the act in question that the belief or intent of the individual members of the general assembly who voted for the act was, that it should apply only to a particular city. . . . . If any other city may in the future, by virtue of its increase in population, and the action of its municipal authorities, ripen into a city of the same class and grade, it is still a law of a general nature, and is not invalid, even if it confer corporate powers. On the other hand, if it is clear that no other city in the state can in the future come within its operation without doing violence to the manifest object and purpose of its enactment, and to the clear legislative intent, it is a local and special act, however strongly the form it is made to assume may suggest its general character."

From this time, the constitutionality of the intricate system of classification was considered to be settled; and it was only necessary for the framers of municipal measures to be careful in wording their bills so that they were general in form, and legally capable of adoption by other cities than those for which they were primarily intended. It is true the question continued to be raised at times; and on some occasions the supreme court expressed its doubts whether the scheme of classification was originally constitutional, but it felt constrained to decide in accordance with the previous cases, under the doctrine of *stare decisis*.[5]

Meanwhile, in the guise of laws dealing with classes and grades of municipalities, the government of Ohio cities was regulated in the main by statutes applying only to single cities. For the most part, these statutes were passed at the wish of the local members, who were assumed to represent the wishes of the local communities. But this method of legislation not only introduced all sorts of local idiosyncrasies in municipal government, destroying every semblance of a

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[1] McGill *v.* State, 34 Ohio St. 270. See also State *v.* Brewster, 39 Ohio St. 653.

[2] State *v.* Cincinnati, 20 Ohio St. 18; State *v.* Cincinnati, 23 Ohio St. 445.

[3] State *v.* Mitchell, 31 Ohio St. 592.

[4] 43 Ohio St. 98.

[5] State *v.* Wall, 47 Ohio St. 499, 500.

general system; but it also opened the way for partisan measures which dislocated the local machinery of government for the sake of temporary political advantage, without making progress in the direction of a satisfactory municipal organization.

At the regular session of the general assembly in the spring of 1902 there were passed several measures making important changes in the government of Cleveland and Toledo, in the usual form of acts applying to grades of cities. One bill transferred the control of the Cleveland parks from the municipal authorities to a county board; and another, authorizing any county auditor to apply for the appointment by the state board of appraisers of a board of tax review to supersede the local body, was obviously intended for application only in Cleveland. These measures were passed by the republican majority in opposition to the expressed wishes both of the municipal authorities and the members of the legislature from Cuyahoga county. For Toledo, the locally elected police board was to be replaced by a bi-partisan commission, appointed by the governor of the state; while an elected board of administration was also created to take over the functions of several previously existing boards. These changes were proposed and supported by the Toledo members of the legislature, and the latter had the advantage of concentrating the control of municipal public works under a single authority; but the police bill was vigorously opposed by the mayor and both measures were thought to be intended to weaken his political influence.

These measures served to strengthen the growing opposition to the notorious evasion of the constitution which made them possible; and in the case of the Toledo police bill the opposition resulted in a suit at law, which reopened the legal question and led to the startling decision of the supreme court. The elected police commissioners of Toledo refused to surrender to the new commissioners appointed by the governor. Application was then made for a writ of mandamus to compel the delivery of books and papers to the state board. About the same time two other cases came before the supreme court on the same issue,—that certain acts conferring corporate powers on municipal authorities were special acts, in violation of the constitution. One was an application for an injunction to prevent the trustees of the Cincinnati hospital from issuing bonds authorized by an act specifying the particular institution by name. The other was a *quo warranto* proceeding, brought by the attorney general against the directors of the principal municipal departments

in Cleveland for judgment of ouster,—this suit involving the constitutionality of an act of 1891 establishing the so-called "federal system" in Cleveland.

The unanimous decision of the court in these cases was that corporate powers were conferred; and, in contradiction to the former rulings, it was held that the statutes applying to single cities were special acts, although in form applying to all cities of a given class. The argument was presented most fully in the Toledo case (*State ex rel. Kniseley* v. *Jones*[1]); andis of special importance in contrast with the doctrine laid down in the former case of *State* v. *Pugh*. Says Judge Shauck, who wrote the opinion in all of these cases:—

"That there has long been classification of the municipalities of the state is true. It is also true that while most of the acts conferring corporate powers upon separate municipalities by a classified description, instead of by name, have been passed without contest as to their validity, such classification was reluctantly held by this court to be permissible. But attention to the original classification and to the doctrine upon which it was sustained, must lead to the conclusion that the doctrine does not sustain the classification involved in the present case. . . . . . . . . . The judicial doctrine of classification was that all the cities having the same characteristic of a substantial equality of population should have the same corporate power, although another class might be formed upon a substantial difference in population. The classification now provided affords no reason for the belief that it is based upon such substantial difference in population as the judicial doctrine contemplated. . .

"In view of the trivial differences in population, and of the nature of the powers conferred, it appears . . . that the present classification cannot be regarded as based upon differences in population, or upon any other real or or supposed differences in local requirements. Its real basis is found in the differing views or interests of those who promote legislation for the different municipalities of the state. . . . The body of legislation relating to this subject shows the legislative intent to substitute isolation for classification, so that all the municipalities of the state which are large enough to attract attention shall be denied the protection intended to be afforded by this section of the constitution. . . . . . . .

"Since we cannot admit that legislative power is in its nature illimitable, we must conclude that this provision of the paramount law annuls the acts relating to Cleveland and Toledo if they confer corporate power."

It is not necessary here to follow the argument on the question of conferring corporate power. This was shown to the satisfaction of the court, and judgment rendered accordingly.

The decision in the Toledo and Cincinnati cases simply declared void new statutes, and left the previous laws in force. But in the

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[1] State *v.* Jones, 66 Ohio St. 453.

Cleveland case, to have authorized immediate execution of the judgment would have overturned a system of ten years' standing, and left the city with no executive officials. The court therefore suspended execution in order to "give to those discharging the duties of the other departments of the government of the state an opportunity to take such action as to them may seem best, in view of the condition which the execution of our judgment will create."

The action which the judgment of the court made imperative was nothing less than the enactment of a new municipal code for all the cities and villages in the state. For, not only could the Cleveland situation be remedied in no other way; but the principle laid down by the court announced the whole body of municipal legislation as unconstitutional. Accordingly the governor summoned the general assembly to meet in extraordinary session on August 25th, to enact the necessary legislation.

While the decision of the supreme court was both startling, and on the whole unexpected, it cannot be said that the legislature was altogether unprepared for the situation. For years the obvious evasion of the constitutional provisions had been recognized, both by laymen and lawyers; and serious efforts had been made to secure a general municipal code.

In 1898, there had been created by the legislature a commission of two lawyers, differing in their party allegiance, who were authorized to draft a bill. After two years of labor, this commission presented an elaborate measure, known generally as the Pugh-Kibler code, from the names of the members of the commission. This bill abolished the classification of cities, and established a council of seven members as the legislative body in each city. It separated legislative from the administrative functions; and organized the administrative authorities on the same principles as govern the federal administration, which had already been applied to some extent in Cleveland and Columbus. Under this scheme each municipal department was placed under the control of a single official or director, appointed by the mayor. The bill further provided for a comprehensive application of the merit system in the appointment of all subordinate officers and employees; and for the abolition of the party column in ballots for municipal elections.

This bill was introduced in the general assembly in 1900, and with some amendments again in 1902. But, although endorsed by the state bar association, it failed to receive adequate consideration. It must be confessed that there was little popular demand for the

radical changes in organization proposed; but the more potent obstacle seems to have been the provisions for a stringent merit system and for non-partisan elections, which were naturally not favored by the politicians who profited by the existing methods. There was a little active debate on the merits of the bill; but by the policy of neglect nothing effective was accomplished. Nevertheless a well-considered bill had been prepared and given some attention; and it might have been expected that the principles of this measure would have received serious consideration when the question was forced on the legislature at its special session.

In the interval before the general assembly came together, the governor took the lead in framing a bill which became the text for discussions in the legislature. This activity of the governor in framing legislation marks a striking exception to the theory of the separation of legislative and executive powers; and a notable departure from the customary American practice, the more significant because in Ohio the governor does not possess the veto power.

The governor consulted with a number of republican members of the legislature from different cities in the state; but this included no representation from either Cleveland or Columbus, while the most active part in framing the governor's bill was taken by legislators and city officials from Cincinnati. The result was a bill framed to a large extent on the existing organization in Cincinnati, an organization which has been the outcome of heterogeneous piecemeal legislation, and has never been considered elsewhere as a model or even as a consistent system of municipal government.

One feature of the Cincinnati government, which it was understood the governor wished to extend, was early abandoned; but only to reappear under another form in the code finally adopted. This was the control of the police by a bi-partisan board appointed by the governor. Instead, a bi-partisan board of public safety, appointed by the mayor, was provided to have control of the police and fire departments. Each city was also to have an elected board of public service, to have charge of public works, health, charitable institutions and libraries. Other officers were to be appointed by the mayor, except the treasurer and auditor. The council was to have a small proportion of its members elected on a general ticket. All of the city officials, except members of the board of public safety were to have three-year terms, and to be chosen at the triennial spring election. This scheme of organization was to be established in every city in the state, and every municipal corporation of over 5000 population was to be a city.

When the general assembly met, the governor's bill was promptly introduced in both houses. The senate proceeded to consider it in committee of the whole; and after a very cursory discussion passed the bill with a few minor amendments, on September 30th. The house, however, showed a more thorough appreciation of its duties, and gave more serious consideration to the measure. A committee of twenty-two members was appointed, which held public sessions for more than two weeks, at which city officials and others interested presented their opinions; after which the committee framed a bill of its own differing in important respects from that of the governor.

The most important changes to be noted were the substitution of single directors, to be elected by popular vote, in place of the boards of public safety and of public service, and provisions for the application of the merit system in the selection of the members of the police and fire departments. Other bills had also been introduced: one providing for the "federal system" of organization, as in the Pugh-Kibler code; and another, supported by the state chamber of commerce, authorized each city to frame its own charter in a local convention. The latter measure was said to conflict with the constitutional provision requiring the legislature to provide for the organization of municipalities. The "federal system" did not find favor with the majority, mainly on account of political conditions. The two cities where some features of this plan were in operation (Cleveland and Columbus) had elected democratic mayors; and although leading Cleveland republicans upheld the system, there was apparently an undercurrent of feeling that in some way its general adoption might strengthen the democratic party. More specifically the republican leaders were thought to be anxious to weaken the political influence of the mayor of Cleveland, who had become the leader of the democrats throughout the state. This injection of state and national politics prevented any fair consideration of the federal plan on its merits as a system of municipal government.

On October 7th, the bill of the house committee, amended somewhat in the house, was passed by that body. Owing to the important differences between the bills as passed by the senate and house, a conference committee was appointed. Here for two weeks the proposed code was further discussed; and, contrary to the usual custom of conference committees, the sessions were for the most part public, in the sense that newspaper representatives were present and the proceedings and conclusions were published from day to day. The proceedings showed an astonishing lack of consistency

on the part of the conference committee. The house bill was taken as the foundation of their work; but this was freely amended and re-amended. Votes taken on a particular section were often reconsidered; and some sections were completely recast, not only once, but several times on entirely distinct lines. Rumors of outside influences at work were freely circulated; and in particular a United States senator and the republican "boss" of Cincinnati were alleged to have dictated the final form of the measure. Finally the conference committee made its report, and on October 22nd, the code became law. The final vote in the senate, 21 to 12, was strictly on party lines. In the house, three democrats voted for the bill, and the vote stood 65 to 34. The opposition of the democrats prevented the enactment of new provisions for municipal courts, as under the Ohio constitution legislation establishing judicial courts requires the affirmative vote of two-thirds of the members of each house.

As adopted, the municipal code contains most of the features of the governor's bill, but with some serious alterations and considerable additions. The council in each city will be a single house, the number of members varying with the population, elected partly by wards and partly on general ticket. The elective officers consist of a mayor, president of the council, treasurer, auditor, solicitor and a board of public service of three or five members. All of these are chosen for two-years terms, except the auditor whose tenure is for three years. Other officers provided for by the code are to be appointed by the mayor, but subject to varying restrictions. The board of public safety of two or four members, must be bi-partisan, and the mayor's nominations must be confirmed by two-thirds of the council, failing which the governor of the state is to make the appointments. This board is to make contracts and rules for the police and fire departments; and is also to act as a merit commission to examine candidates and prepare eligible lists for positions in these departments. From these lists of eligibles, the mayor is to make appointments and promotions. The board of health is to be appointed by the mayor with the confirmation of the council. A sinking fund and tax commission of four members and a library board of six members are to be appointed by the mayor. The mayor will have a limited veto power, which may be overridden by a two-thirds vote of the council. The board of public service will have complete charge of all public works and municipal improvements, including the power to make contracts, to determine its own

subordinates, fix their salaries and make appointments, subject only to the council's power to limit appropriations.

This scheme of organization, which goes into effect in April 1903, applies uniformly to all the seventy-two cities of over 5000 population. The organization of villages is left very much as under the former law.

A critical examination of the code enacted reveals some features to be commended as improvements over the preceding conditions in Ohio; but also shows many points of weakness; and on the whole the code fails to establish a satisfactory permanent system of municipal government.

The changes for the better may be first noted. Of these, the most important is clearly the advantage of a uniform general system over the complicated variety of statutory provisions enacted under the former schemes of classification. The law of municipal corporations in Ohio is now distinctly simpler and more intelligible; the principal municipal officers and their functions will be the same in each city; and the bulk of municipal legislation has been greatly reduced. While the general powers conferred on cities do not authorize any experiments, every city in the state may now exercise all the powers which have been assumed in any city. Thus municipal lighting plants and municipal universities are within the scope of any city without further legislative action. In the organization provided, the plan for electing some members of the municipal councils at large offers an opportunity for strengthening that branch of the municipal government. Defective as is the board system established, it is also true that the board of public service will in some cities absorb the functions of several existing boards, and thus to some extent simplify the municipal organization. And the limited provision for the application of the merit system, ineffective as it seems likely to prove, is at least a slight concession to the demand for a more stable municipal service free from the influence of the spoils system.

But when these improvements have been noted, there remains a much longer list of indefensible features and neglected opportunities. The broadest charge made against the code is that it does not grant an adequate measure of home rule; but this charge is too indefinite, and must be made more specific and discriminating. Extreme advocates of municipal independence will probably urge that the whole question of municipal organization should be left for each city to determine for itself; and that in place of a list of enu-

merated powers each city should have unlimited authority to undertake any function it pleases. But apart from the question of policy, certain legal facts stand in the way of any such proposals. On the one point, there were and are strong grounds for believing that the mandatory provisions of the Ohio constitution requiring the legislature to provide for the organization of municipalities prohibits any delegation of organizing powers to the cities. On the other point, stands a long line of judicial decisions limiting municipal powers to those expressly granted by statute. Under these circumstances, if a wisely devised scheme of organization had been provided, with an ample list of specified powers and the selection of officers left to each city, the code would have met all reasonable requirements for municipal home rule.

But these conditions are in fact far from being fulfilled. The specific powers granted are not adequate to modern conditions. In particular, there is no authority under which a city can assume the ownership and operation of street railways or other undertakings requiring the use of the public streets; for, without advocating municipal ownership as a general rule it may safely be said that each city should have the *power,* under suitable restrictions, to determine such questions for itself. The rule for local selection of officers meets with a serious exception in the provisions in reference to the board of safety, which were obviously adopted for distinctly partisan purposes. When the mayor's nominations for this board are not confirmed by a two-thirds vote of the council, the governor is to make the appointments. Apparently, the sole purpose of this provision is to give a republican governor the power of appointing these boards in democratic cities; as it is believed that the republicans will have at least one-third of the members of the councils in these cities, and thus be able to prevent confirmation of the mayor's nominations. A device of this kind cannot be defended, and is sufficient in itself to warrant severe criticism of the code. And this attitude is taken with a full admission of the fact that police affairs are not only of local but also of general interest, justifying state supervision. But that supervision should be extended to all localities on a uniform basis, and in accordance with the principles followed in the state supervision of local school and health authorities.

When the scheme of municipal organization provided in the code is examined in detail, it can be seen at once that little or nothing has been adopted from recent discussions or from recent legislation in other states dealing with this problem. The list of elective offi-

cers is too numerous to permit the voters, especially in a large city, to learn the qualifications of the various candidates; and the result will inevitably be the continuation of party tickets and party voting. The number of elective officers also prevents the concentration of responsibility for the municipal administration as a whole. The diffusion of responsibility is more thorough by the complicated system of boards for the various branches of administration; while there is a complete absence of any method for securing the harmonious co-operation of the various departmental officers. It will be noted that there is not even a uniform system of boards established; but the different boards represent almost every conceivable method of board organization. The board of public safety in particular is a strange creation. Combining as it does the power to make contracts and to act as a merit commission, it is almost certain that the latter function will be subordinated to the former, and it is very doubtful if the provisions for a merit system of appointments will be effectively executed. Moreover these provisions apply only to the police and fire departments; and all other branches of the municipal service are left entirely free to the continuation of the spoils system.

Two motives seem to have played the leading part in bringing about these results. On the one hand, the political powers in Cincinnati wished to preserve the machinery in operation in that city as much as possible, since they knew how it worked and how it could be controlled. On the other hand the alleged desire to weaken the political influence of the mayor of Cleveland roused opposition to any suggestions in the direction of concentrating power and responsibility in the hands of the mayor.

In view of these facts, the code just enacted is not likely to remain long unchanged. Indeed it may be said, that when the next regular session of the Ohio legislature is held in 1904, its most important business will be the amendment and revision of the municipal code.

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