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NOTE

A METROPOLITAN APPROACH TO GOVERNMENT IN UPSTATE NEW YORK

I. METROPOLITAN AREAS IN THE UNITED STATES AND UPSTATE NEW YORK

In the past 100 years, 1860 to 1960, the population in the United States has increased from 31.4 million to 179.3 million.¹ During this same period the percentage of the population classified as urban residents went from 19.8 percent to 69.9 percent.² By the current Bureau of Census definition "urban population comprises all persons living in urbanized areas [cities of 50,000 people or more and their environs,³ and persons who live] in places of 2500 inhabitants or more outside urban areas . . ."⁴ In the past 40 years, 1920 to 1960, the people who live in urban areas have more than doubled, from 54.1 million (51.2% of the people) to either 112.5 million under the old definition of urban areas or 124.6 million (69.9% of the people) under the current definition.⁵

In 1959 the Bureau of Budget established a new category for urban and non-urban residents, called the "Standard Metropolitan Statistical Area." The Bureau of Census has classified population according to these "SMSA's" or "metropolitan areas." They follow county lines. "[E]very city of 50,000 inhabitants or more . . . is included in an SMSA" and generally it will allow "consideration as a unit the entire population in and around a city the activities of which form an integrated economic and social system."⁶ Close to two-thirds (62.4%) of the people live within the 212 designated metropolitan areas in the United States. Within these 212 areas in the period from 1950 to 1960, the population increased by 23.5 million people.⁷

By comparing census figures for "urbanized areas" and SMSA's a general picture can be obtained of the growth of population in metropolitan areas prior to 1950.⁸ Viewing both together it can be concluded that there is an accelerated trend for our increasing population to cluster in metropolitan areas.

1. 1 U.S. Bureau of Census, Dep't of Commerce, Census of Population: 1960 (Characteristics of the Population) pt. A (Number of Inhabitants), table 2, at 1:4 (1961) [hereinafter cited as 1960 Population Census].

2. 1960 Population Census table 29, at 1:29.

3. "An urbanized area contains at least one city of 50,000 inhabitants or more in 1960, as well as the surrounding closely settled incorporated areas that meet the criteria. . . ." 1960 Population Census at XVIII.

4. 1960 Population Census at XII.

5. 1960 Population Census table 20, at 1:29.

6. 1960 Population Census at XXIV. "The definition of standard metropolitan statistical areas involves two considerations: first, a city or cities of specified population to constitute the central city and to the county in which it is located as the central county; and, second, economic and social relationships with contiguous counties which are metropolitan in character. . . ."

7. 1960 Population Census table R, at XXVII.

8. The population of SMSA's in 1960, 112.8 million, 1960 Population Census table R at XXVIII, differed only slightly from the population of urban areas, 124.6 million, *id.*

The local government structure, counties, cities, towns and villages,⁹ in these metropolitan areas is considerably fractionalized; there are 7027 of these units of local government within the 212 SMSA's.¹⁰

Upstate New York¹¹ has experienced the same population growth and clustering as the rest of the nation. There are six SMSA's in Upstate which are designated Buffalo, Rochester, Syracuse, Utica-Rome, Binghamton and Albany-Schenectady-Troy. Bringing the total to 3.4 million, a million more people lived within these areas in 1960 than did in 1930.¹² The SMSA's now represent 84.2 percent of all the people in the Upstate area¹³ and during the period 1950-1960 these metropolitan areas had an average population increase of 18.1 percent.¹⁴

Local government responsibility is just as divided in these areas as it is in the rest of the nation. Within the six SMSA's the number of counties, municipalities (cities and villages) and towns are:¹⁵

SMSA	Counties	Municipalities	Towns	Total
Buffalo	2	26	37	65
Rochester	1	11	19	31
Syracuse	3	39	56	98
Utica-Rome	2	32	45	79
Binghamton	1	8	16	25
Albany-Schenectady-Troy	4	29	48	81

The dilemma of a homogeneous concentration of population¹⁶ arbitrarily divided up by a multitude of autonomous local government units is seriously aggravated when considered in light of what are generally known as "metropolitan problems." An alteration in our pattern of living has resulted from rapid technological advances accompanied by economic and social changes. In the wake of these changes has settled a host of problems which are concentrated

table 20, at 1:29. Some people classified as urban residents live outside of SMSA's but "in general . . . urbanized areas represent the thickly settled portions of SMSA's." *Id.* at XXV.

9. School districts and special improvement districts, sometimes classified as units of local government, will not be considered in this paper.

10. 1 U.S. Bureau of Census, Dep't of Commerce, *Census of Governments: 1962, (Governmental Organization)* 11 (1963).

11. Because it presents special problems, Greater New York City will not be considered. Upstate New York, hereinafter termed Upstate, designates the rest of the State outside of the New York City area and Long Island.

12. 1963 Rep. of the Joint Legis. Comm. on Metropolitan Areas Study, to the N.Y. Legis. 14 [hereinafter cited as *Legis. Rep. on Metropolitan Areas*].

13. 1963 *Legis. Rep. on Metropolitan Areas* 13.

14. 1960 Population Census table 11, at 34:29.

15. 1 U.S. Bureau of Census, Dep't of Commerce, *Census of Governments: 1962, (Governmental Organization)* table 15, at 154:59. Recently, "as a result of the continuing analysis of the 1960 Federal Decennial Census of Population," the U.S. Bureau of the Budget has enlarged two of the Upstate SMSA's. However, at this time, it does not appear that the Bureau of Census has formally adopted these enlargements. Added to the Rochester SMSA were three more counties with their municipalities and towns. The Binghamton SMSA was enlarged to include a neighboring county in Pennsylvania. *State of New York Office for Local Government Newsletter*, Dec. 8, 1963, p. 1, col. 3.

16. It should be pointed out that not every unit of local government within an SMSA can be classified as urban. In fact probably at least half the area of many SMSA's are rural in nature. But they are within the counties that are at least part urban and are therefore affected and necessarily included.

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where the people are, in metropolitan areas. A recent list by the noted authority Mr. Luther Gulick is illustrative:

Slums; congestion; obsolete buildings and factories; juvenile and other crime; rackets; crowded schools; reduced standards of educational quality; deteriorating transportation with rising costs; increased water and air pollution; traffic congestion and accidents; chronic unemployment; reduced individual aid and social responsibility; segregation and handicaps for minority groups; ugly and insulting "developments"; silly and extravagant mass "consumerism"; the needless destruction of natural values; and the deterioration of cultural standards and resources.¹⁷

Although there might be variations or differences in emphasis, many writers in the field and various government reports concur that this is symptomatic of the American urban scene.¹⁸ And although concentrating on a need for more efficient services, such as water, sewer and police, reports and articles which discuss New York State agree on the seriousness of these problems in our metropolitan areas.¹⁹

These problems are obviously not respecters of the boundary lines of local units of government; with varying degrees of intensity they exist in any given total metropolitan area. No wonder then that authorities call for governmental activity, in one form or another, on a metropolitan area basis as the most effective means of dealing with "metropolitan problems."²⁰

17. Gulick, *The Metropolitan Problem and American Ideas* 10 (1962).

18. See Fiser, *Mastery of the Metropolis* (1962); Gordon, *Sick Cities* (1963); Advisory Comm'n on Intergovernmental Relations, 87th Cong., 1st Sess., *Report on Government Structure, Organization and Planning in Metropolitan Areas* (1961); Advisory Comm'n on Intergovernmental Relations, 87th Cong., 1st Sess., *Commentaries on a Report on Government in Metropolitan Areas* (1961); Graduate School of Public Service, State Univ. of N.Y., *Metropolitan Area Problems—News and Digest* (1959-1963); Bodine, *Use of Metropolitan Councils in the Urban Community*, in *The Rule of Law in the Urban Community: A Symposium*, 111 U. Pa. L. Rev. 871 (1963); Clark, *The Extension of Political and Legal Order to the Metropolitan Area Community*, in *The Rule of Law in the Urban Community: A Symposium*, 111 U. Pa. L. Rev. 855 (1963); Feldman & Jassy, *The Urban Community: A Study of New Approaches to Local Government in Metropolitan Areas*, 73 Harv. L. Rev. 27 (1960).

19. See Erie County . . . *Time for Action* (Buffalo Courier Express reprint of a series of articles 1960); Erie County Planning Dep't & Niagara County Planning Bd., *Erie-Niagara Regional Plan—A Summary Report* (1961); Greater Buffalo Development Foundation, *Metropolitan Buffalo Perspectives* (1958) (a report by a group of Canisius College professors under the direction of Professor Austin Murphy); N.Y.S. Office of Local Government, *Proceedings of the Local Government Workshop* (1961); N.Y.S. Office of Local Government, *Proceedings of the Local Government Workshop* (1960); N.Y.S. Office for Local Government, *Proceedings of the Municipal Law Seminar*, June 4-5, 1963; 1958, 1961, 1962 & 1963 Legis. Rep. on Metropolitan Areas.

I am indebted to Richard L. Miller, Executive Director of the Greater Buffalo Development Foundation, and Ralph M. Barnes, Commissioner of the Erie County Planning Department, for time spent with me in many discussions on the significance of metropolitan problems in general and in the Buffalo area.

20. See authorities cited notes 18 and 19 *supra*.

II. CASE HISTORIES OF METROPOLITAN AREA GOVERNMENT ACTION

A. *The United States*

There are a variety of approaches being taken by metropolitan areas in the United States. The government of Dade County, Florida, was reorganized on a "metropolitan" basis and a strong county government was formed by the transfer of powers and functions of the City of Miami and twenty-seven other incorporated municipalities to Dade County.²¹ The same type of reorganization was effected by the Parrish and City of Baton Rouge.²² City-county consolidation has occurred between Davidson County and Nashville, Tennessee.²³ A Metropolitan District Commission was formed in the Boston area and is completely responsible for water and sewer service as well as parks; the service area includes forty-two other cities and towns other than Boston.²⁴ California has authorized multi-purpose districts which can extend over county lines to handle such problems as public transportation and zoning.²⁵ There are a multitude of proposals for annexation of territory to central cities. It has worked well in Houston, Texas and Oklahoma City, Oklahoma, probably because those cities were not ringed with incorporated municipalities.²⁶ Strengthened county governments have been authorized in California and Maryland.²⁷ Eighty-four municipalities and nine counties in the San Francisco Bay area²⁸ and six counties in the Detroit area²⁹ have formed committees of governments, so that they may act cooperatively in matters of area concern. With this overview³⁰ of the proposals that have been made and the action that has been taken throughout the nation, an analysis of Upstate will be made.

B. *Upstate New York*

In New York State there has been a movement to have counties assume more responsibility. Many counties in metropolitan areas now are responsible for such things as public health services and civil defense.³¹ The counties of Erie (Buffalo SMSA), Monroe (Rochester SMSA), Onondaga (Syracuse SMSA) and Oneida (Utica-Rome SMSA) have selected charter forms of government.³²

21. 1963 Legis. Rep. on Metropolitan Areas 20-24; Gulick, *The Metropolitan Problem and American Ideas* 93, 98, 155-56, 160 (1962); Fiser, *Mastery of the Metropolis* 125-28 (1962).

22. Gordon, *Sick Cities* 281-82 (1963).

23. Graduate School of Public Service, State Univ. of N.Y., *Metropolitan Area Problems—News and Digest*, May-June, 1963, p. 4.

24. Gordon, *Sick Cities* 281 (1963).

25. 1961 Legis. Rep. on Metropolitan Areas 66-67.

26. Gordon, *Sick Cities* 301-17 (1963); 1961 Legis. Rep. on Metropolitan Areas 86-92.

27. Gordon, *Sick Cities* 289 (1963).

28. 1961 Legis. Rep. on Metropolitan Areas 80-81.

29. Fiser, *Mastery of the Metropolis* 128-30 (1962).

30. For a more complete list of alternative area governmental approaches to metropolitan problems see 1961 Legis. Rep. on Metropolitan Areas, 65-92; N.Y.S. Office of Local Government, *Proceedings of the Local Government Workshop* 61-64 (1960).

31. 1958 Legis. Rep. on Metropolitan Areas 66-67.

32. State of N.Y. Office for Local Government, *County Charters in New York State* at iv (1963).

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However, a recent publication, analyzing the charter provisions of these four counties, indicates that they exercise few meaningful powers and that the other units of government within each county remain almost entirely autonomous.³³ Erie and Niagara Counties entered into a cooperative agreement to produce in 1961 the *Erie-Niagara Regional Plan—A Summary Report*³⁴ which is a study of land-use planning in the Buffalo SMSA. In the Binghamton SMSA all the planning, including urban renewal, is done by one planning board.³⁵ There are a variety of cooperative agreements within each metropolitan area for the provision of services.³⁶ Moreover, at least in Syracuse, a group has been formed that is “involved with metropolitan growth and development . . .” This group is called the Syracuse Metropolitan Development Association and deals with the Onondaga County area.³⁷ Though there is a significant amount of progressive activity in most of the Upstate metropolitan areas, it would appear that little of it is directly pointed toward government action on an area basis.

III. THE LEGAL FRAMEWORK FOR AREA GOVERNMENT ACTION IN UPSTATE NEW YORK

Governmental power in the six Upstate metropolitan areas is divided among a multitude of local units; there seems to be a need for action on an area basis, and apparently little is being done. Following a broad look at New York legal authority bearing on state and local government, the various forms in which area governmental action could be cast will be examined.³⁸

A. *Legal Background*

The New York State Constitution can only be altered by a constitutional amendment which is accomplished in two stages. First, the Legislature, the Senate and Assembly, must pass the proposed amendment by a majority in both houses in two different legislatures, *i.e.*, a general election must intervene. Then it must be approved by a majority of voters in a statewide referendum.³⁹ Statutes become law with a majority vote of the Legislature and the Governor's approval, or if he rejects it, with a two-thirds vote of the Legislature.⁴⁰

The State, in relation to local units of government—cities, towns, counties,

33. See State of N.Y. Office for Local Government, *County Charters in New York State* (1963).

34. Erie County Planning Dep't & Niagara County Planning Bd., *Erie-Niagara Regional Plan—A Summary Report* (1961).

35. N.Y.S. Office for Local Government, *Local Government Cooperation—A Guide for Municipal Officials 24-26* (1963).

36. See N.Y.S. Office for Local Government, *Local Government Cooperation—A Guide for Municipal Officials* (1963); 1958, 1961 & 1962 Legis. Rep. on Metropolitan Areas.

37. Letter From Henry W. Schramm, Research Director, New York Joint Legislative Committee on Metropolitan Areas Study to author, April 13, 1964.

38. Because that part of the New York State constitution and statutes which bears on local government is not altogether clear, a complete exposition of legal authority would not have been possible without the guidance of Dean Jacob D. Hyman, School of Law, State University of New York at Buffalo.

39. N.Y. Const. art. XIX.

40. N.Y. Const. art. III, § 14; art. IV, § 7.

and villages—is the repository of all powers. The local units are political subdivisions of the State. Except as limited by the State constitution, the State Legislature may grant power and authority to local units of government, and modify or withdraw it rather freely.⁴¹ Unless the State action would deprive individuals of their civil liberties, the State may exercise this power unrestrained by the United States Constitution. This doctrine was fairly well settled in a 1907 United States Supreme Court case which involved a State directed consolidation of two cities.⁴²

On January 1, 1964, a New York constitutional amendment, article IX, the "Local Government Article," took effect. This contains much of the constitutional authority dealing with local governments, although other authority is scattered throughout the constitution. Well over half of the subject divisions within the Consolidated Laws of New York contain statutory authority that deal with or touch on the operation of local government.

The new constitutional amendment provides a "grant of power to all counties, cities, towns and villages to enact local laws not only concerning their property, affairs and government, but also concerning a list of ten other specified subjects. . . ."⁴³ Thus, a fairly broad grant of local legislative power is provided for all local units of government in New York.

The Legislature may not act in relation to the "property, affairs or government" of local units except by general law (that which would apply to all cities, all towns, etc.⁴⁴), special request from the local unit, or by a declaration of emergency from the Governor.⁴⁵

The combination of affirmative grants of power to local units with restrictions on the State would leave local units of government fairly free to deal with their own problems in any manner that they thought best, were it not for past judicial interpretation of the phrase "property, affairs and government." When the Legislature has passed laws dealing with the concerns of any particular city, and the city objected, the courts have been prone to interpret this phrase narrowly, at least insofar as it operated as a restriction on the State.⁴⁶ But now new article IX states that "effective local self-government

41. *People v. Tweed*, 63 N.Y. 202, 207 (1895); *MacMullen v. City of Middletown*, 187 N.Y. 37, 42, 79 N.E. 863, 864 (1907).

42. *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

43. Moore, *Home Rule in New York*, Local Government Law Service Letter, Oct. 1963, p. 1, 2. The reference here is to N.Y. Const. art. IX, § 2(c).

44. N.Y. Const. art. IX, § 3(d)(1).

45. N.Y. Const. art. IX, § 2(b)(2).

46. For an excellent summary of this problem see Diamond, *Some Observations on Local Government in New York*, 8 Buffalo L. Rev. 27, 34-37 (1958). Updating the problem in relation to the new constitutional amendment is a series of articles. Lazarus, *A Comment Upon Charter Revision in New York City and Upon the Pending New York Amendment Affecting Home Rule*, Local Government Law Service Letter, Sept. 1963, p. 1; Moore, *Home Rule in New York*, Local Government Law Service Letter, Oct. 1963, p. 1; Letter From Jacob D. Hyman, Dean of the School of Law of the State University of New York at Buffalo, to Jefferson B. Fordham, Editor, Local Government Law Service Letter, Nov. 11, 1963, in *Home Rule in New York—Further Discussion*, Local Government Law Service Letter, Nov. 1963, p. 1, 2.

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and . . . are purposes of the people of the state"⁴⁷ and that "powers . . . granted to local governments by this article shall be liberally construed."⁴⁸ Local units have been given some powers of self-government and in view of the new constitutional language, failure to effectively exercise this power would not be warranted because of the former attitude of the courts.

Thus, while the Legislature remains free to affect the organization of local government, by statutory changes or the initiation of constitutional changes, local government, cresting a slowly developing trend,⁴⁹ currently enjoys fairly complete grants of legislative and administrative power.

B. *A Review of Alternatives for Metropolitan Area Governmental Action*

An exercise of governmental power on an area basis in any one of our six Upstate metropolitan areas could take any of several forms. First to be considered will be the possibility of a federation of the present units in a metropolitan area with a form of government structured above the local units. This would mean creating a new and different type of local government unit than presently exists. The New York State constitution of 1777 adopted cities, counties, and towns as the units of local government and in 1821 villages were added. The adoption of these units of government is "equivalent to a direct prohibition against the creation of other civil divisions vested with the same powers."⁵⁰ Also, article VIII, section 3, of the constitution states in effect that any other types of municipal corporations with the power to tax or contract indebtedness are prohibited. New article IX, the Local Governments Article, defines a unit of "local government [as a] county, city, town or village."⁵¹ Consequently the creation of any new form of local government, such as a federation of present units, would require a constitutional amendment.

Consolidation or merger of units of local government might be considered as an alternative method for effecting government action on an area basis. This could be accomplished in two ways, municipal incorporation or annexation. Two, or perhaps more, units of local government might wish to incorporate as one city or an area in a town might wish to incorporate as a village. This normally is effected by a petition to the State Legislature from the units of government and residents concerned. The Legislature has complete authority to grant or withhold a charter of incorporation.⁵² Constitutional authority for annexation is repeated in section 1(d) of the new Local Government Article. Though it would seem to allow annexation of local government *units*,⁵³ a provision of the

47. N.Y. Const. art. IX, § 1.

48. N.Y. Const. art. IX, § 3(c).

49. The section of the constitution that made local officers immune from outside interference first appeared in the 1821 New York Constitution art. IV, § 15. See text at notes 56-57 *infra*.

50. *People ex rel. Hon Yost v. Becker*, 203 N.Y. 201, 208, 96 N.E. 381, 384 (1911).

51. N.Y. Const. art. IX, § 3(d)(2).

52. N.Y. Const. art. IX, § 2(a); art. X, §§ 1 & 5, and statutes thereunder.

53. "No local government or any part of the territory thereof shall be annexed to another until. . ." N.Y. Const. art. IX, § 1(d).

municipal annexation article makes it clear that one unit of government cannot be completely absorbed in another.⁵⁴ Annexation is limited to the addition of *territory* from one unit of local government to another.⁵⁵ A statutory change would be necessary to allow the absorption of units of local government by annexation. But even with the necessary aid of the Legislature forthcoming for incorporation or annexation, it cannot be envisioned that enough units of government could be incorporated as one or annexed to each other to make area action possible in any given Upstate SMSA. Therefore, unless the approach of consolidation or merger were part of some complete area plan it would fall far short of the goal of area action.

A series of shifts in the powers and functions of local governments between each other or from smaller units to larger units is another approach that could provide the basis for area action. Functions or powers of units of government are exercised by their officers. If a function were transferred out, the officer in charge is affected. An old section of the constitution carried over into the new amendment says that "all officers of every local government whose election or appointment is not provided for by this Constitution shall be elected by the people of the local government, or of some division hereof, or appointed by such officers of the local government as may be provided by law."⁵⁶ At one time some states, where the majority of the state legislature was of a different political faith than the government of a major city, occasionally passed laws to transfer the duties of the city officials to others who were politically aligned with the legislature.⁵⁷ So the purpose of this section is to secure to local government the right to choose their own officers without interference from the State.⁵⁸ It will also prevent a larger unit of local government from usurping a function of a smaller unit.⁵⁹ Therefore, shifts in functions among local units of government could probably only take place where specifically authorized.

Article IX, section 1(h), the authorization for a strong form of county government, provides for the transfer of functions. The people of a county, in a referendum, may choose a "charter" form of government which may provide for a county executive. The county charter or a subsequent charter law, also subject to a referendum, may provide for the transfer of functions and powers of cities, towns and villages to the county. At the same time, while the units of government may not be abolished,⁶⁰ their "offices, departments and agencies" may be.⁶¹ Two of our Upstate metropolitan areas are made up of one county, two contain two counties, one contains three and another four

54. "The term annexation shall not include the creation or dissolution of a county, city, town or village, or the consolidation of two or more towns or two or more villages, respectively. . . ." N.Y. Gen. Munic. Law § 701.

55. N.Y. Gen. Munic. Law § 701.

56. N.Y. Const. art. IX, § 1(b).

57. Fordham, *Local Government Law* 13 (1949).

58. *People v. Albertson*, 55 N.Y. 50 (1873).

59. *Town of Pelham v. Village of Pelham*, 215 N.Y. 374, 109 N.E. 513 (1915).

60. N.Y. Munic. Home Rule Law § 34(d).

61. N.Y. Const. art. IX, § 1(h).

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counties.⁶² To this extent a transfer of functions and powers presently lodged in the multitude of cities, towns and villages within each Upstate metropolitan area, to a county charter government is a means of area government action.

Cooperation among all the local units of government could also produce this result. Article VIII, section 1, provides for joint financing where municipalities are cooperating together "pursuant to law." And there are many statutes authorizing the joint provision of a variety of services. But each one of these statutes only covers a specific situation among named units.⁶³ This article also contains a phrase which would indicate a grant of broad cooperative power, but probably because the article is concerned with financial matters, that phrase has apparently been successfully cited only once.⁶⁴ The new amendment, for the first time, positively authorizes cooperation. A constitutional "bill of rights for local governments" states that "effective local self-government and intergovernmental cooperation are purposes of the people of the state."⁶⁵ And article IX, section 1(c), says that "local governments shall have power to agree, as authorized by act of the legislature, . . . with other governments . . . to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately."

Three facets of this new constitutional section will be examined carefully. In the first place, what do local governments "provide separately"? As has already been indicated⁶⁶ local governments have been given significant grants of power of self-government and are authorized by statutes to deal with an almost endless list of concerns, including selection and removal of their own officers.⁶⁷

The constitution gives local governments this power to cooperate "as authorized by the act of the legislature." A section of the General Municipal Law, the municipal cooperation law,⁶⁸ provides the authorization. It states "municipal corporations . . . shall have the power to enter into agreements for the performance among themselves of their respective functions, powers and duties or for the provision of a joint service."⁶⁹ A joint service is "the joint performance of any . . . function or power which each of the municipal corporations . . . has the power . . . to provide, perform or exercise, separately."⁷⁰ The statute provides that these agreements must be approved by a three-fourths

62. See note 15 *supra* and accompanying text.

63. There are over 200 separate statutes dealing with cooperation between municipalities cited in N.Y.S. Joint Legis. Comm. on Metropolitan Areas Study, *Municipal Cooperation—A Digest of the Law of New York* (rev. ed. 1963).

64. 1962 N.Y. Ops. Atty. Gen. 92.

65. N.Y. Const. art. IX, § 1.

66. See text at notes 43-49 *supra*.

67. N.Y. Const. art. IX, § 1(b), § 2(c)(1) & (2). If the removal of an elective officer is contemplated, a referendum would be required. N.Y. Munic. Home Rule Law § 23(2)(e)-(g).

68. N.Y. Gen. Munic. Law § 119(m)-(o).

69. N.Y. Gen. Munic. Law § 119(o).

70. N.Y. Gen. Munic. Law § 119(n).

vote of the governing body of each local unit involved. Naturally, the right to participate is qualified where the exercise of a function or a power is subject to a public hearing or referendum.⁷¹ The municipal cooperation law is a very broad authorization for intergovernmental cooperation. In addition to the joint performance of their respective powers and functions, the allocation of revenues, manner of engaging and discharging personnel, acceptance of gifts or bequests, and the making of claims for federal or state aid may be contained in these agreements between local units of government.⁷²

If efficiency is to be achieved, duplication eliminated, and matters of joint concern handled together, intergovernmental cooperation must necessarily involve elimination of some officers of local governments. The interpretations of article IX, section 1(b), of the constitution, discussed above, indicate that local officers are immune from outside interference. Therefore, there is the possibility that elimination of officers in cooperative endeavors could be barred by the constitution. But several factors tend to refute this assumption. First, this section was added to the constitution to prevent the State from making a wholesale replacement of local government personnel and this section has apparently only been relied on to prevent this or to prevent arbitrary action by another unit of government.⁷³ What we are talking about now is local governments jointly undertaking to do what they could do alone—abolish their own officers.⁷⁴ Second, authorization for local government cooperation is now in the constitution, and should be read in conjunction with the section concerning permanency of local officers. Last, there is at least statutory authorization for joint agreements that deal with “the manner of employing . . . or discharging necessary personnel . . .”⁷⁵ Based on all this, it is fairly safe to assume that constitutionally authorized, voluntary cooperation is something entirely different from arbitrary state action, and that local governments, when cooperating together, should be able to eliminate their own local officers.

Strong local units of government, clear statutory authorization and a way open to eliminate officers with duplicating functions effectively complete this

71. N.Y. Gen. Munic. Law § 119(o).

72. It is interesting to note that not one reference was found tying up this statute with article IX. In the Governor's Memorandum of Approval for the Municipal Home Rule Law and the municipal annexation law, N.Y. Munic. Home Rule Law at v-vi (McKinney 1963), reference is made to article IX and the implementing legislation, but the municipal cooperation law is not mentioned. The same is true of releases issued by the executive branch of the State government concerned with this area of the law, the Office for Local Government. See, e.g., N.Y.S. Office for Local Government Newsletter, Sept. 18, 1963. One reason for this could be that the municipal cooperation law was first passed in 1960. It was designed to complement art. VIII, § 1, see N.Y. Gen. Munic. Law § 119(m) (Legislative Intent), but “. . . questions . . . arise as to the scope and extent . . .” 1963 N.Y. Legislative Annual 225. Possibly one of the purposes of the sections dealing with intergovernmental cooperation in new art. IX was to provide firmer underpinning for this statute than did art. VIII. Even though there have been no formal statements or changes in § 119(m), there is little doubt that this statute is the implementation for art. IX § 1(c).

73. See notes 58 & 59 *supra* and accompanying text.

74. N.Y. Const. art. IX §§ 1(b), 2(c)(1) & (2).

75. N.Y. Gen. Munic. Law § 119 (o)2(b).

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new constitutional section on cooperation. Intergovernmental cooperation is available as a form of area action.

Allied with intergovernmental cooperation would be the idea of a committee or council of local governments. All the local government units in a metropolitan area could band together to provide a forum for joint action. There is statutory authority for "Joint Municipal Survey Committees"⁷⁶ and it provides that local units may create a committee "to strengthen local governments and to promote efficient and economical provision of local government services. . . ." A group such as this has the power to promote the economic and general welfare of the participating municipalities, work with State or private agencies, and conduct surveys to aid in the solution of local government problems.

To the extent that complete land use planning parallels many functions of local government, such planning can be considered as a form of area government action. A statute provides that "any county . . . in collaboration with . . . cities, towns or villages in such county [and] any adjacent county or counties [and their local governments] may establish a regional planning board. . . ."⁷⁷ Such a regional planning board is "empowered to perform planning work, including but not limited to surveys, land use studies, urban renewal plans and technical services, and shall study the needs and conditions of metropolitan [and] regional planning . . . and prepare and adopt . . . a comprehensive master plan for the development of the entire area. . . ."⁷⁸ Authorized to deal with many of the problems that beset our metropolitan areas, regional planning boards that would exercise their full powers and prepare a complete master plan, would be an effective tool for area government action.

There are other approaches which do not necessarily involve structural changes, shifts in power or joint action but do involve a relinquishment of local government power. The creation of public authorities to handle some problem that is area-wide in scope, such as police protection, is an example. Under our constitution article X, section 5, authorities are "public corporations" which are created by special act of the legislature. But by statute⁷⁹ their use is limited; their purpose is "to construct or operate a public improvement." Therefore, the legislature would undoubtedly have to make statutory changes for authorities to be used in the manner suggested. Authorities operate independently of the local unit of government while special districts, which could also be created to do the same thing, are structured into the local government. The constitution, article VIII, section 3, authorizes the local creation of districts on at least a county-wide basis. They are used to provide services and are referred to in the constitution and elsewhere as "improvement districts." A district could be a useful device for a specific county-wide service problem, or with the necessary change in the statute, an area-wide service problem. But the

76. N.Y. Gen. Munic. Law § 239-n.

77. N.Y. Gen. Munic. Law § 239-b.

78. N.Y. Gen. Munic. Law § 239-d(1).

79. N.Y. Gen. Corp. Law § 3(4).

number required to manage all service requirements would be a serious disadvantage; the same would apply to extensive use of the authority. Whether a district or authority could be used to perform other government functions is debatable, because if its power approximated that of a county, city, town or village then its legal entity could be undermined and a constitutional change might be required.⁸⁰ Though their use would be limited, authorities and districts are both available as a form of area government action.

Another solution could come in the form of State Legislative authorization, other than what has already been indicated as necessary. The power of the Legislature in this context has already been discussed.⁸¹ It is conceivable that a group of local governments might request a special law or that the Legislature might pass a statute that would have the effect of authorizing some form of metropolitan area action. Although the State Legislature can never be eliminated either as a source of help or hindrance, with the power that local governments now enjoy and the variety of alternatives available, gratuitous statutes might not be forthcoming and requested special laws should not be necessary.

These are the possible forms that governmental action in any one of the six Upstate metropolitan areas could take. Reviewed, along with the present or necessary authorization, were: the creation of a new form of local government; consolidation or merger by municipal incorporation or annexation; the transfer of powers and functions from one unit of government to another and selection of a strong form of county charter government; intergovernmental cooperation and committees of local governments; regional planning boards; use of public authorities and improvement districts; and special state laws.

IV. ANALYSIS OF PROBLEMS

The purpose of this section is to make a more thorough qualitative analysis of the foregoing options for area government action. This is done with the thought than any one or all of the Upstate metropolitan areas would wish to translate authorization into area action.

Several points have already been made. The use of incorporation or annexation, authorities or districts, and to a limited extent the charter form of county government could fall short of effective action throughout a whole area. Burdensome duplication could exist as a result of reliance on authorities and districts. And the State Legislature might be reluctant to approve new laws dealing with local government organization or operation.

The more dramatic options available were new forms of local government such as a federation of present units, consolidation or merger of units, or the selection of a strong form of county government involving a meaningful shift in functions. They require to some extent an alteration of structure and a re-

80. See text at notes 50-51 *supra*.

81. See text at notes 41-49 *supra*.

organization of local government as we know it today. Several impediments stand in the way of any of these options. They can be roughly divided into the categories of legal difficulties, political and popular preference for the status quo, and our tradition of strong local units of government.

As indicated, almost any change in the structure or functions of local government Upstate would require either a constitutional amendment, state legislative action, local government concurrence, approval by the people in a referendum, or usually some combination of these. Legal action of this sort is difficult to initiate and takes quantities of time, persistence and knowledge.

A change in governmental forms or a wholesale shift in functions would probably mean that some public officials would either be without a job or without power. Politicians do not normally vote themselves out of office nor do they urge their constituents to do so. The ordinary citizen does not like to see any lessening of power in his own unit of government and people in the suburbs and rural areas might not be willing to compromise their own independent governments, which they probably view more as a bulwark against the inherent problems of cities than anything else. Marshalling political and popular approval for changes in local government could prove most difficult.⁸²

In New York State there is a strong tradition that runs in favor of autonomy and strength of small, local units of government. We generally do not like to remove government action too far from the people, and we like to have our local units exercise meaningful powers. Our history and experience is that local government, close to the people, undertakes to solve their problems.⁸³

So perhaps, because of the impediments that exist and because our tradition and experience run in a different direction, government reorganization or dramatic shifts in the functions of units of government are not answers.

The remaining alternatives for government action on a metropolitan area basis are intergovernmental cooperation, committees of local governments and regional planning boards. The constitutional and statutory authority for these forms are clear; no further legal action is required for their implementation. No referendum of approval is required, nor would resistance of the people or public officials be expected. And these forms of government action fit well within New York State tradition and experience.

V. AN ACTION PROGRAM

The above methods are of the "self-starter" type; they are not some form of complete government reorganization that can be spun out of a single act or fiat. In terms of a complete and integrated metropolitan area program the use of these powers remain largely dormant. It would appear that

82. For a more exhaustive treatment of this subject see Moak, *Some Practical Obstacles in Modifying Governmental Structure to Meet Metropolitan Problems*, 105 U. Pa. L. Rev. 603 (1957); Gulick, *The Metropolitan Problem and American Ideas* 98-100 (1962).

83. 1963 Legis. Rep. on Metropolitan Areas 24; 1961 Legis. Rep. on Metropolitan Areas 17.

some sort of vehicle is needed, first, to interest the people and units of local government in any given metropolitan area in the need for area action, and second, to initiate and exploit, on an area basis, the integrated use of the powers available. "Metropolitan councils" is a phrase used for groups formed in metropolitan areas that interest themselves in problems like this. They are traditionally made up of private citizens representing groups such as business and labor, and government officials representing all the local units of government. This is an expansion of one form of area action mentioned—committees of local governments. Their use is strongly urged by writers in the field of government reorganization.⁸⁴ If correctly organized and effectively used in any one of the Upstate metropolitan areas, a metropolitan council would provide the following: formal recognition that individual units of government and their people are part of one homogeneous metropolitan area, a forum where "metropolitan problems" can be discussed in the context of the whole area, and an institutional framework from which effective area action could develop.

Taking as a starting point the powers of self-government that local units of government now enjoy, a metropolitan council should initially move in two directions. First, it should encourage the development of an area master plan. The plan should be a blending of local wishes with area-wide perspective, should deal with all phases of land use planning including public and private transportation facilities and central city renewal, and hopefully should be adopted by every municipality in the area. Second, a metropolitan council should promote, in every possible way, cooperation among the various units of local government in the area. For every problem, or every provision for a service or facility, that can be more effectively and efficiently managed by two or more local units, a cooperative agreement should be drawn up and put into effect.

With a committee of local governments as part of a metropolitan council, local units of government fully exercising their powers of self-government, an area master plan, and intergovernmental cooperation on an area basis, the groundwork is well laid for the final step. In any given metropolitan area Upstate that reaches this stage the people and officials of the local units should be ready to approve the transfer of meaningful functions to the county government. By selection of a charter form of government or by charter amendment all the phases of powers and functions of the local units that can best be exercised on a county-wide basis should be transferred to the county. At this point and in this atmosphere it should not prove too difficult to have agreements between counties in any metropolitan area that contains more than one county, to deal with problems best handled on an area basis. Strong, cooperating county governments complete the action program.

Thus, the most effective means of dealing with urban growth and metro-

84. Fiser, *Mastery of the Metropolis* 136-50 (1962); Bodine, *The Use of Metropolitan Councils in the Urban Community*, in *The Rule of Law in the Urban Community: A Symposium*, 111 U. Pa. L. Rev. 871 (1963); Parker, *Cooperation in Metropolitan Areas Through Councils of Governments*, Public Management, Oct. 1963, p. 223.

NOTE

politan problems, government reorganization and area government action, can be accomplished in the Upstate metropolitan areas. It can be on a sound basis with local unit encouragement and participation, well within the political and social predilections of the people, and grounded in New York tradition and experience. Metropolitan area government is available to each one of the six Upstate metropolitan areas.

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