

10-1-1958

Some Observations on Local Government in New York State

David Diamond

University at Buffalo School of Law

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [State and Local Government Law Commons](#)

Recommended Citation

David Diamond, *Some Observations on Local Government in New York State*, 8 Buff. L. Rev. 27 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/3>

This Leading Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

SOME OBSERVATIONS ON LOCAL GOVERNMENT IN NEW YORK STATE

By DAVID DIAMOND*

THE VAST field of local government in the United States is often unexplored terrain to the lawyer in general practice. To the average layman, it is a dark continent, about which many hold firm opinions, the underlying facts of which are often cloudy and obscure.

Those who have thought at all about the subject usually start with certain basic assumptions: (1) that the closer government is to the people, the more desirable it is; (2) that local government is the closest of all governments to the governed; and (3) that honest, strong, efficient local government is basic to the survival of a government such as ours. These are beliefs which are so widely held that Americans have added them to the catalogue of truth which they hold to be self-evident.

The importance of being informed is obvious. It is the purpose of this article to present some of the facts and to discuss a few of the many legal problems which beset the great and growing field of local government in New York State.

At the outset, one might mention an often overlooked facet of local government, one which adds emphasis to its importance and which underscores its role on the national scene. It is a training school for public officials. A glance at the Congressional Directory, for example, would disclose that a vast number, perhaps a majority, of the members of the Congress of the United States, commence their public careers as local officials: mayors, judges, aldermen, councilmen, selectmen, legislators and the like. The same has been true, perhaps in smaller measure, of some of the highest appointive officials in the federal government, at least prior to the time when the armed forces became the source from which so many high appointive officials have been drawn.

Hence, the experience and training which these public officials receive at the local level form the basis for their attitudes and their conduct as they ascend from rung to rung in the public service. The official atmosphere in State capitols and the national capitol is apt to be conditioned by the background of the office-holders who have "risen" from their former local jobs to wider eminence.

Good, strong local government is a major stabilizing influence in the affairs of a nation; where it is absent, democracy often perishes. It is interesting to note the almost complete absence of local self-government in the countries which

* The author is a member of the New York State Bar and a lecturer in local government at the University of Buffalo, School of Law. He is a former Corporation Counsel of the City of Buffalo and is presently a member of the Governor's Committee on Home Rule.

have suffered violent upheavals in recent times: Russia, Germany, Spain, Italy, to cite a few European examples; Argentina and Venezuela, among others, in South America. In such countries, the national chain was composed of local links too weak to resist the strain of dictatorial assaults.

I am not suggesting an over-simplification of the causes of totalitarianism. The reasons for the lack of local self-government in those countries are obviously legion. They are to be found in their history, religion, economics and social structure. I do suggest, however, that the apex of the governmental pyramid can be no stronger than its base and that the base of a federal, representative government such as ours rests, in turn, upon the structural and administrative character of its local units of government. Furthermore, since most of the contacts which the average citizen has with the government are at the local level, that is where his opinions of government are most often formed. His belief in our form of government is apt to be weakened or strengthened according to the experience he has with the public officials with whom he comes in contact. These officials are more often than not officials of local government: the same mayors, councilmen and the like, whom he may later elect to State or federal office.

There is considerable evidence that the past few years have at long last witnessed a growing realization of the importance of improving local government. Even amidst the current storms and stresses of the international situation and the controversies characterizing the national scene, there seems to be taking place, notably in the State of New York, an awakened interest in the manifold problems of local government. Changed and changing conditions all over the State, especially in the metropolitan areas, have far outdistanced, outmoded and outgrown many of the statutes, including the State constitution, which are the legal bases of our units of local government.

Voluntary organizations, the governor of the State of New York, the State legislature, some county boards of supervisors, some city legislative bodies and others have embarked on studies and investigations which, in some instances, at least, hold forth promise of perhaps slow but inevitable improvement. The League of Women Voters, for example, has had, as one of its principal projects, the improvement of local government. Governor Harriman has appointed a Committee on Home Rule to study and report on home rule problems of the municipalities of the State. The State legislature has several special groups studying metropolitan area problems, town and village governments, etc., in addition to its standing committees. Some constitutional amendments have been proposed. The Association of Towns and the Conference of Mayors and Village Officials are also studying the matter.

LOCAL GOVERNMENT IN NEW YORK STATE

The wonder has been that we have been able to get along as well as we have with the antiquated forms under which local government has long operated. All the circumstances considered, given the systems which they serve, local officials by and large have done almost as well as could have been expected. They are usually a conscientious, hard-working group of dedicated public servants, operating a Model T vehicle in a jet age. It is probably true that many of them have become so accustomed to the familiar old model that they hesitate to scrap it for a more modern and efficient, though not necessarily a less expensive one. Many, however, have shown a willingness to cooperate in the quest for structural improvement.

It is fashionable in our country to consider those who make their living in the service of government as a group which is somewhat less than perfect. We have not yet achieved the maturity of the English, who regard the civil service as a fine career for the sons and daughters of their "best families."

The public service, like private business, has its share of malingerers and malefactors. Both groups are human, with all the frailties which attend upon the human race. But the public servant, small and great, as distinguished from the employee of private business, is under a permanent spot-light, with a wide-angle lens. His every act is, and should be, carefully scrutinized. We seem to have a double standard of morality in this sphere, among others. We rightly condemn the derelictions of public officials, while at the same time condoning similar actions on the part of private employees. I believe it to be a fact that there is more integrity, not less, in public business than in private enterprise; that the vast majority of the employees of government give a full day's work for a day's meager pay; that their salaries and wages, plus some slim fringe benefits, constitute the entire extent of their remuneration.

That so many of our citizens believe otherwise is tragically unfortunate. This wide-spread fallacy weakens our faith in public life, undermines our respect for our public officials and leads to the subversion of our belief in our form of government.

Familiarity with government, in all of its aspects, on the part of an intelligent and informed citizenry, is sadly lacking. Ignorance and indifference are the greatest enemies of governments like ours. If recent polls are any indication, there exists an incredible amount of ignorance of some of the most elementary facts of public life.

Unfortunately, the general public, though most directly affected, has, at least until quite recently, shown particularly little interest in the governments closest to their daily lives. The ordinary citizen has been content to scan the headlines

BUFFALO LAW REVIEW

and read the comic strips and to neglect, by the default of his indifference, the units of government which most intimately regulate and affect his day-to-day existence. In the more rarefied atmosphere of so-called intellectual circles, it has generally not been fashionable to be concerned with such mundane problems as police, sewers, streets and water supplies. To such groups, the distant Far East and darkest Africa have seemed much closer than home, as objects of study and concern.

As a result, citizen interest in local government problems has lagged miserably, with perhaps the greatest "lag-of-the-law" occurring in that field. While there has been considerable improvement in the structure of State governments in our country, there has been comparatively little in municipal government. Our own State government, for instance, was re-organized during the administration of Governor Alfred E. Smith. The federal government may be on the threshold of improvement, what with the benefit of the Hoover Commission's advice, little of which has thus far been accepted. By and large, however, there has thus far occurred little structural change in the area of local government.

The importance of strong, efficient local government has been paid lip service by many a political figure. Political scientists and others have written often and at great length on the subject. But as with the weather, nobody has done much about it; at least until quite recent times.

It would, therefore, appear to be of some timely value now to examine a few of the aspects of local government, as it has developed in New York State.

A Backward Glance

Local government in the United States, like other types of government, took on the forms which were dictated by the background of the settlers, their economy and the geography and topography of their new surroundings. Of course, there were other influences at work, as the new settlements developed with the passing of time.

Generally speaking, three principal types of local government came into being. In New England, the town was the basic unit. There, the town meeting was developed to its highest state as the apotheosis of local democracy in action. It has apparently reached its zenith, however, as the conditions which gave it birth have changed.

In the South, and in some Mid-western, Northwestern and Western States, the county is the basic unit of local government. In some of these States, town government is practically non-existent.

LOCAL GOVERNMENT IN NEW YORK STATE

The third principal form of local government is a synthesis of the other two forms, with town and county vying for supremacy, especially in recent times. New York State's local government is of this third type. Commencing in the middle of the 17th century, local government developed from rudimentary beginnings to its present complicated state.

The first State constitution, adopted in 1777, contained references to cities and counties. The legislature was empowered to divide the State ". . . into such other and further counties and districts as it may then appear necessary."

Within the next few years, the legislature carried out the mandate of the constitution by creating counties and towns, with the background of English rule contributing greatly to the character of the statutes enacted.

In 1790-1798, the first acts incorporating villages were passed. But it was not until the constitution of 1821 that villages were given constitutional status as civil divisions of the State.

Local government in New York did not actually commence with these statutes. Its forms had begun to take shape in the middle of the previous century with the settlement of Long Island by Englishmen. The last twenty years of that century saw considerable activity in the field of local government and that activity continued with varying speeds down through the period of the Revolution to the constitution of 1777.

From that time on, local government has been the subject of hundreds of enactments by the legislature and of numbers of amendments to the State constitution.

The courts, too, have played a major role, but more often as brakes than accelerators on some of the trends which have developed in local government in New York State.

The Present—Some Facts

It is doubtful whether the immense number and wide complexity of local governments in New York State are generally realized. There are 7538 units of local government, empowered to tax or assess the owners of real property within their respective areas, often with overlapping jurisdictions.

Making up the 7538 units are 62 counties, 62 cities, 932 towns, 549 villages, 1969 school districts, 767 fire districts and 3197 improvement districts.

BUFFALO LAW REVIEW

The State legislature has, in addition, authorized the creation of 106 public authorities, some 78 of which are in actual operation. Nine of these are international, interstate or State-wide. The comparatively modern device of doing public business through the medium of an authority has been authorized by the legislature in the following fields: 69 times for public housing, 5 times for parking, 5 times for water, 3 times for regional marketing, once for a hospital and 15 times for sewers, bridges, light, heat, power, etc., in addition to the nine above mentioned. (See N.Y. Public Authorities Law.)

In a different and additional category are to be found 130 consolidated health districts, scattered all over the state.

Taken together, these governmental units and instrumentalities directly and indirectly affect virtually every inhabitant and business organization within the State's borders.

The counties, cities, towns and villages are naturally the units with which most people are more familiar, at least insofar as their general outlines are concerned. But their functions and powers have proliferated and pyramided, in the last generation or so, to an extent hardly realized by those not intimately connected with their activities.

The counties of the state, according to the 1950 U. S. enumeration, range in population from 4105 in Hamilton County, to 2,738,175 in King's county: the cities from New York City with 7,891,957 to Sherrill with 2236: the towns from Hempstead (Nassau County) with 685,176 to Benson (Hamilton County) with 85. Over 4½ million people live in the towns: over 30% of the State's population. The villages range from a population of 36,542 in Valley Stream (Nassau County) to 12 in Dering Harbor (Suffolk County), according to the 1957 U. S. enumeration.

Thus, it may be seen that outside of New York City and some counties, the largest municipality in the State is a town, Hempstead; that there are towns and villages larger than many cities and counties; that there are villages larger than many towns, cities and counties. The enumerations cited are the latest available in each instance.

The Present—Some Law and Some Results

The law of local government in the State of New York is principally statutory, with a large body of judicial decisions construing the statutes.

The statutory law, being scattered throughout the consolidated laws, it is

LOCAL GOVERNMENT IN NEW YORK STATE

often a difficult task to wade through the welter of statutes to locate a particular provision. The need for statutory re-codification and consolidation is progressively indicated.

The principal chapters of the consolidated laws relating to local government are the following: County Law, Town Law, Village Law, Village Home Rule Law, General Municipal Law, General City Law, Second Class Cities Law, City Home Rule Law, Optional County Government Law, Local Finance Law.

In addition, local government is materially affected by provisions of such statutes as the Education Law, Civil Service Law, Condemnation Law, Highway Law, Multiple Dwelling Law, Multiple Residence Law, Tax Law and some others.

All of these statutes are, of course, based upon the State constitution, the major local government provisions of which are found in articles VIII and IX. Others are scattered through articles VI, XI, XVI, XVII and XVIII.

The 3197 improvement districts, referred to above, carry out certain specialized municipal functions. Section 190 of the Town Law empowers a town board to establish or extend in a town, outside of any incorporated village or city, the following 11 kinds of districts: sewer, drainage, water, park, parking, lighting, snow removal, water supply, sidewalk, refuse and garbage. In addition, certain towns may also establish or extend public dock districts or beach erosion control districts.

The towns may also establish water storage and distribution districts and sewage disposal districts (Town Law, section 190-a).

The districts are established on petition of the owners of the taxable real property of the proposed or extended district, the cost to be borne by them (Town Law, section 202). But the faith and credit of the entire town must be pledged to the payment of their obligations, under section 2 of article VIII of the State constitution.

Towns may also create fire districts, fire alarm districts and fire protection districts, on petition (Town Law, article 11). 767 have been created.

Counties may also create county water districts (County Law, article 5-A), county sewer districts (County Law, article 5-B), county drainage districts (County Law, article 5-C), county small watershed protection districts (County Law, article 5-D) and county tuberculosis hospitals (County Law, article 7-A).

A proliferation of districts has resulted, especially in some of the larger towns. Scores of separate district entities have been created in many of them,

BUFFALO LAW REVIEW

with attendant financial and administrative problems of great magnitude. In the State as a whole, we thus have 3197 empires within empires, of varying size and complexity. Hundreds of millions of dollars in bonds and other obligations have been issued by municipalities to finance them, which all of the real property owners of the towns containing them are directly or indirectly obligated to pay, whether they directly benefit or not.

Inevitably, existing law, aided and abetted by a rising tide of inflation, has caused a staggering increase in the cost of creating and maintaining this myriad of special districts. Taxes and special assessments have risen to the point of sometimes discouraging the construction of much-needed facilities, such as sewerage and water.

The problem is particularly acute in the so-called metropolitan areas, especially in suburban areas which are contiguous to large centers of population. All students of the problem seem to agree that the situation is crying for solution. But there is, as yet, little agreement on the method of attaining a solution. An attempt will be made below at least to indicate some possibilities.

Home Rule

"Home Rule" is a term which is dear to the hearts of countrymen and city-dwellers alike. When, in 1924, the State constitution was amended with the obvious purpose of giving cities control over their "property, affairs and government," it was thought that a vexing problem had been solved once and for all. The meaning of the quoted words seemed plain, their purpose patent.

Later on, somewhat similar powers, using much the same language, were granted first to counties and then to villages of the first-class, under amendments to the same article of the constitution (sections 1 and 16, respectively). On November 4, 1958, the voters of the State of New York approved further amendments to the county home rule provisions. Whether these amendments will actually broaden county home rule powers in practice, will depend on many factors, not the least of which will be the manner in which the legislature will implement the new constitutional provisions by statute.

Towns, as such, have not yet been given home rule powers. There is pending, however, in the legislature, a proposed constitutional amendment giving to towns of the first-class home rule powers similar to those granted cities and villages of the first-class. If the proposed amendment is approved by the legislature for a second time, in the 1959 session, it will be submitted to the voters for their approval or disapproval in that year. If approved, the new section (article IX, section 17) will mandate the legislature to enact implementing general legislation

LOCAL GOVERNMENT IN NEW YORK STATE

on or before July 1, 1960. In the case of towns, as in the case of counties, much will depend on what the legislature enacts.

The Court of Appeals has often reiterated that the constitution must be given ". . . the meaning which the words convey to an intelligent, careful voter . . ." (e.g., *Kubn v. Curran*, 294 N.Y. 207, 61 N.E.2d 513 (1945)). But the home rule amendments (now article IX, sections 11 and 12) are construed in quite a different manner by that court, at least as far as "property, affairs and government" are concerned.

In 1929, a scant five years after the city home rule provisions became a part of the State constitution, the Court of Appeals decided the leading case of *Adler v. Deegan* (251 N.Y. 467, 167 N.E. 705). It there held, by Crane, J., that the words "property, affairs and government" were not to be given a Webster's Dictionary meaning, but "a Court of Appeals definition." The court then went on to uphold the validity of the Multiple Dwelling Law, which applied only to the city of New York. That statute had been adopted by a simple majority vote of the legislature and not by two-thirds of its voting strength, etc., as required by the home rule amendment in the case of a law which did not apply ". . . in terms and in effect alike to all cities . . ." (article IX, section 11, *supra*).

The court held that the building regulations laid down in the statute were a matter of "State concern" and were not to be included as part of the "property, affairs and government" of New York City.

It is not unfair to say that *Adler v. Deegan* sounded the virtual death-knell of home rule as its sponsors envisaged it. Subsequent judicial decisions, some examples of which are set forth below, followed this first great precedent in case after case.

In addition to creating a no-man's land which cautious municipal attorneys feared to enter, it has been made almost impossible to foretell, with any degree of certainty, what the court might hold to be a matter of "State concern," as distinguished from the "property, affairs and government" of a municipality.

Another of the many important consequences of this attitude of the courts has been the introduction in the legislature of hundreds of special acts, in a typical legislative session amounting to almost 25% of all of the bills introduced. Because of the confusion and uncertainty, judicially created, a large part of the legislature's time is devoted to items of purely special local interest. For example, in the 1955 legislative session, 872 laws were enacted. No less than 223 of these related to the local problems of named municipalities.

BUFFALO LAW REVIEW

Back-scratching and log-rolling, those ancient legislative games, are thus to be played in perpetuity. For instance, in the 1955 session, all the legislators of the sovereign State of New York were asked to meditate and pass on the merits of laws authorizing the sale of unused lands of the villages of Dundee, Bayville, Larchmont, et al, on laws authorizing a municipality to repair a bridge, to build a bridge, to train volunteer firemen and to construct an office building. Perhaps the finest example of this category of laws is the one passed in the same session, authorizing the disposal of duck waste in Suffolk county.

The so-called home rule statutes enacted by the legislature in carrying out the mandate of the constitutional amendments have, in some instances, in fact, limited rather than expanded home rule. For example, they exclude certain subjects. They require referenda in some areas of local legislative power (See City Home Rule Law, sections 21 and 15, and Village Home Rule Law, sections 2 and 15). The result is, again, that State legislation must be sought, with enactment possible only under the two-thirds vote requirement.

The following fairly recent cases are indicative of some of the areas which have been held to be matters of "State concern" not comprehended in the term, "property, affairs or government":

Taxation: *County Securities v. Seacord*, 278 N.Y. 34, 15 N.E.2d 179 (1938).

Indebtedness: *Salzman v. Impellitteri*, 305 N.Y. 414, 113 N.E.2d 543 (1953).

Education: *People ex rel. Elkind*, 295 N.Y. 929, 68 N.E.2d 34 (1945).

Water: *Bd. of Supervisors v. Water Power & Control Comm.*, 255 N.Y. 531, 175 N.E. 300 (1930).

Health: *Robertson v. Zimmerman*, 268 N.Y. 52, 196 N.E. 740 (1935).

Parks, transit, local civil service, ticket agencies, social welfare, bridges and highways have, among others, also been held to be matters of "State concern."

On the other hand, the courts have permitted local units to legislate on such subjects as the hours and working conditions of firemen and the selection of officers, regarding them as objects of local concern. *Holland v. Banks*, 290 N.Y. 267, 49 N.E.2d 16 (1943); *Johnson v. Etkin*, 279 N.Y. 1, 17 N.E.2d 401 (1938); *City of New Rochelle v. Seacord*, 30 N.Y.S.2d 240 (1941).

Local laws superseding State laws concerning notice of sidewalk defects have been upheld. *Fullerton v. City of Schenectady*, 285 App.Div. 545, 138 N.Y.S.2d 916, *aff'd*, 309 N.Y. 701, 128 N.E.2d 413, *appeal dismissed*, 350 U.S. 980 (1956).

LOCAL GOVERNMENT IN NEW YORK STATE

But in *Kelly-Sullivan v. Moss*, 174 Misc. 1098, 22 N.Y.S.2d 491, *aff'd*, 260 App. Div. 921, and 183 Misc. 3, 49 N.Y.S. 2d 860 (1943), the court held that the theatre ticket business was a matter of "State concern." The same reasoning was applied to a local law, prohibiting peddling on the streets of a city, in *Good Humor Corp. v. City of New York*, 290 N.Y. 312, 49 N.E.2d 153 (1942).

These cases are illustrative of the uncertainty amounting to confusion which has characterized the field of home rule law. A city or village attorney having the interests of his municipal client at heart can hardly be blamed for attempting to remove the veil of doubt which so often covers proposed legislation, by resorting to the legislature.

In addition to the case law, only a few examples of which have been cited, there is a large body of opinions of the State comptroller and attorney general on the subject of home rule, which, taken together with the statutory and decisional law, erect signposts of caution to warn the practitioner of the dangers ahead.

It must be apparent that there is less home rule than meets the legal eye in the State of New York; that there exists more confusion than certainty and that municipalities are understandably discouraged in their quest for home rule powers. Home Rule has been seriously retarded by definition—the "Court of Appeals' definition" in *Adler v. Deegan*, not Webster's Dictionary's.

A Forward Glance—Some Suggestions

It would seem that in the State of New York the first step toward a major solution of the problems of local government must be a clear and express grant to *all* municipalities of power to govern themselves in precisely delineated spheres of local activities.

There is no basis either in logic or experience for granting home rule powers to some municipalities and denying it to others. The village of 4999 inhabitants would seem to be just as much entitled to full self-government as the village of 5000 residents. And, surely, the town of Hempstead, with almost 700,000 people, should have at least the same home rule powers as the city of Sherrill with 2236.

But the town of Hempstead, and every other town in the State of New York, has no constitutional home rule powers. For example, the village board of Dering Harbor, population 12, has the power to initiate an improvement, but the town board of Hempstead can do so only on petition of the owners of the real property affected.

BUFFALO LAW REVIEW

Municipalities should not be straight-jacketed in their choice of local governmental forms. The Optional County Government Law passed by the legislature, in 1937 (Ch. 852), has proved all but unused. Westchester and Nassau counties have their own special governmental structures and the voters of Suffolk County approved a new charter on November 4, 1958. But these are special situations not due to the Optional County Government Law. It has been much too difficult, under existing law, to put new county charters into effect: in many cases, it is virtually impossible.

The now almost universally accepted philosophy of local home rule is essentially the expression of a municipality's right to be different, if it so chooses. There is no magic formula of governmental forms applicable to all cities, all counties, all towns or all villages. Only the city of New York has been treated as *sui generis*. But even the great city of New York has been shackled and inhibited by legislative and constitutional, as well as judicial restraints.

The very least that can be done is to recognize that there are three principal groups or general types of local governments in the State of New York. They are (a) rural, (b) urban and (c) counties dominated by a large city or cities. Each group has its own characteristics and its problems. But within each group there exist certain common situations and problems.

If all municipalities, under a proper grant of home rule powers, were handed the reigns of local government, subject only to the minimum restraints which the sovereign State must inevitably impose, enormous improvement would inevitably result.

It is, of course, realized that legislatures are loathe to give up the great powers which they possess. The situation is additionally complicated by the traditionally rural-dominated legislative bodies which characterize our State and county governments. But there are, nevertheless, definite possibilities of improvement in certain definite areas.

The present (1938) State constitution (article IX, section 1), as amended, carried over from the previous constitution a very limited form of home rule for counties. It afforded counties a measure of protection against legislative action by a law ". . . special or local in its terms or in its effect, or which shall relate specially to one county only . . ." without a "home rule request" or a certificate of necessity from the governor and a two-thirds vote of all the members of both houses of the legislature.

The same article mandated the legislature to provide alternate forms of county government. While optional county government forms were made legally possible

LOCAL GOVERNMENT IN NEW YORK STATE

by passage of the Optional County Government Law, the method of adoption laid down by the constitution (article IX, section 2) proved an insurmountable barrier to real county government reform.

No optional county government form could become operative, under that section, unless it received “. . . a majority of the total votes cast thereon in the county, and if any such form of government provides for the transfer of any function of local government to or from the cities, the towns or the villages of the county, or any class thereof . . .”, it required an additional majority “. . . in such cities, towns, villages or class thereof, as the case may be.”

Only two upstate counties, Erie and Schenectady, have submitted new forms of government to their voters. Both were defeated. The reasons were fairly obvious.

Effective local governmental reform must inevitably include some absorption or consolidation of *functions* by transfer from or among individual local units. This is usually a delicate and controversial subject. People, especially if they are public officials, do not readily yield up their long-held prerogatives and perquisites. Further, there is a natural reluctance on the part of a smaller unit to give up a governmental function to a larger unit. There are also the traditional town vs. country antagonisms.

Viewing the subject realistically, the present constitution requires a double majority before effective county reform can be brought about in upstate counties. In Erie county, the proposed changes received a majority vote in the city of Buffalo, but not in the towns of the county. It is possible for the affirmative county vote-at-large to be, say, twice as large as the negative vote in a single town affected and still not effectuate the proposed change.

The 1958 amendments to section 2 of article IX of the constitution comprise, in some respects, a step forward. One provision mandates the legislature by July 1, 1959, to “. . . confer by general law upon all counties outside the city of New York power to prepare, adopt and amend alternative forms of county government . . .”

But in order to effectuate a change, double majorities, at least, will still be required: (1) in the area of the county outside of cities and (2) in the area of the cities of the county, if any, considered as one unit. . . .” A third majority will be required if a transfer of any function of any village is involved. In such case a majority of the votes cast in the villages affected is also required.

BUFFALO LAW REVIEW

It remains to be seen whether any new form of county government, embodying material functional changes, can receive two or three separate majorities, especially in a county containing a large city and a rural (or suburban) area.

The recent constitutional amendment also mandates the legislature to create alternative forms of county government for upstate counties by general laws laying down the procedure to be used. No special or local law can be passed by the legislature after a county has adopted an alternative form of government unless requested by the governing board of that county, or on a certificate of necessity from the governor and a two-thirds vote of both houses. Under the circumstances set forth in the amendment, a petition by 5% of the electors could stop the legislature's action from becoming effective until the next ensuing general election, when the matter would be submitted for the electors' approval.

There are special provisions for New York City.

Erie County is now preparing a new charter, working hopefully on the assumption that the recent constitutional amendments will be liberally implemented by the next session of the legislature.

The success or failure of the new constitutional amendment is thus laid in the lap of the legislature. But at best, it is still going to be difficult to achieve real county reform under the restrictive referendum provisions of the constitution, for much the same reasons as before.

What is still needed is a simple method of submission to the voters, who would act by the usual majority required in other instances. County officers are not elected by the separate unitary votes of cities, towns and villages. A majority or plurality of all the votes of the county is the only requirement. Towns should not be arrayed against cities, and villages against counties in choosing forms of county government.

It is probable that the ancient antagonism will eventually disappear, especially with the movement to the suburbs (and back), if all the people in a county are given the opportunity to vote together for the betterment of their government.

The great need is for consolidation of *functions* and not of units. There is little benefit to be achieved by consolidating or abolishing towns or villages, as some have suggested. In fact, the evil of abolishing them would far outweigh the good, as large centralized units of government serve further to remove government from the governed.

LOCAL GOVERNMENT IN NEW YORK STATE

Duplication of functions must be eliminated, if the weary taxpayer is to find relief. This could be accomplished, if the State constitution were amended to permit any two or more municipalities to do together what any one of them could legally do separately.

In a typical upstate county, there often exists the following situation: there is a sheriff's department; in a given town there is a town police department and within the town a village maintains a village police force. Within the same over-all area, the State police department patrols the highways. Thus, four separate law-enforcing agencies may overlap in the identical area.

In some localities, contiguous municipalities build and maintain sewage disposal facilities within a stone's-throw of each other, separated by an imaginary town or village line. Water districts, separately created and maintained, impinge one upon the other.

Highway equipment, purchased separately by each small individual governmental unit often lies unused and rusting, instead of being steadily used, cooperatively, by two or more municipalities.

Similar examples could be multiplied without end. That efficiency and economy would be greatly increased by cooperation between municipalities seems too obvious for argument.

But under existing law, little can be accomplished. Much liberalizing legislation, under new constitutional provisions, is required. A step in this direction was taken in 1955 when the constitution (article VIII, section 2-a) was amended to permit the legislature to authorize joint action on water supply, sewage disposal and drainage systems between municipalities. The General Municipal Law was amended to set up the necessary procedure (see, for example, articles 5-B, 5-E, 5-F, 6, 12).

Section 1 of Article IX of the constitution, as amended in 1958, authorizes the legislature to permit counties to join together ". . . by agreement for the discharge . . . of one or more governmental functions." This is real progress. Prior to this, section 225 of the County Law had permitted counties jointly to spend money ". . . but in no event in excess of five thousand dollars," for the propagation of game and fish, and for a few other named purposes, among them the suppression or control of the Japanese beetle infestation and white pine blister rust. But that was largely the extent of possible inter-county cooperation.

Now that the legislature has been given a constitutional mandate to make possible inter-county co-operation, it is to be hoped that the same permission will

BUFFALO LAW REVIEW

soon be extended to all municipalities. Its need has long been apparent. The Joint Legislative Committee on Metropolitan Areas, under the chairmanship of State Senator John H. Hughes, recently published a comprehensive report. It recommended, among other things, joint municipal action for ". . . overpowering the limitations upon individual action by localities." The committee stated that "The issue is one of bridging local boundaries in the interests of adequate and effective public services in the metropolitan areas of the State."

The issue is not limited only to the metropolitan areas of the State, although the problems are most pressing and acute in those areas. Suburban and other areas, too, need constitutional and legislative authority to bridge local boundaries, so that they may perform jointly many of the municipal services which they are now compelled to do separately, at a sacrifice of money and efficiency. Among the many services which could be jointly performed are water, assessment, recreation, health, fire sewage disposal, lighting and planning. Some of them have been attempted both here and in other States. What little experience has been had with joint operation has already proved its feasibility.

Interlocal cooperation, especially in the planning field, must eventually be broadened into regional cooperation in some areas. The situation along the Niagara Frontier is an example. The area along the shores of Lake Erie and the Niagara River offers unlimited possibilities for integration of some functions. Steps in that direction have already been taken by the creation of the Erie County Water Authority, in 1949, and the Niagara Frontier Port Authority, in 1955.

The Erie County Water Authority Act will permit the eventual voluntary absorption of scores of water districts within prescribed areas of the county. The Port Authority Act permits the voluntary development of the lake and river shores and their hinterlands by transcending municipal boundaries for the benefit of the whole Niagara Frontier and the whole State.

These are examples of the potentialities of regional and inter-governmental planning and action which can result in great good. But whether the means of accomplishing the desired end should be public authorities is debatable. Under existing law, creation of authorities, although now somewhat limited by the constitution (article VIII, section 3), seems to be the most feasible means available. But it is widely argued that authorities are too far removed from the people and that their work should properly be undertaken by the officials of local governments. Whatever the merits of this argument, the objection cannot be overcome without amending the constitution and statutes of the State.

The point which must again be underscored is that what is needed is not fewer municipalities, but much fewer special instrumentalities for the carrying

LOCAL GOVERNMENT IN NEW YORK STATE

out of municipal functions. In other words, the proliferation of some units performing special municipal functions must be avoided. The best way to accomplish this much-needed end is to authorize joint ventures, with joint financing, on the part of all municipalities of the State. They should all be permitted to do jointly what they can now do individually.

In the case of counties, far and away the greatest shortcoming is in the lack of an executive head. Cities and villages have mayors, towns have supervisors. But the generally largest local units, counties, are generally headless. Whether the chief administrative officer of the county should be elective or appointive is the subject of perennial argument, in which politics usually rears its head. The argument could be resolved for the benefit of the taxpayer, if some safeguards were set up by way of constitutional qualifications. Surely, it should at least be made mandatory in the case of the elective head, that he be literate. He should also have had some experience in the affairs of government, or its equivalent, in order to be eligible for nomination. There should be provision for the possibility of his recall, in the event that he should prove incompetent or worse. This could be accomplished, as it has been in scores of municipalities all over the United States, by the filing of a petition for a special election, signed by a sufficiently large number of electors to prevent a crack-pot minority from disrupting the orderly functioning of government. The experience of the municipalities having the recall has proved that it need seldom be used; that its mere presence in a charter serves to improve the public service and discourage the wrong-doer.

In the case of an appointive manager, there should also be a definite term of office, with removal of the manager only for cause, after written charges and a public hearing. In no other way can an appointive manager be saved from following the changing whims of a changing majority in the board which employs him.

The same comments apply to the managers or executives of all units of local government. But the particular form which the system takes is not of prime importance. Some of the best-run and worst-run municipalities in the country have managers, presidents, executives, commissioners, etc. Some cities have strong-mayor charters, some have weak-mayor charters. The forms of local government are infinite in their variety. Only theorists contend for particular forms of local government as the panacea for all ills of the body politic.

It is trite and true that without an informed, intelligent and alert electorate, no form of government can long succeed. In its absence, some of the most modern charters have failed. With its presence, some of the oldest charters have worked with great success. The problem is how to inform, and thereby to make intelligent and alert.

BUFFALO LAW REVIEW

The larger the municipality, the greater the problem. In the smaller communities, the villages and the towns especially, there is still a precious reservoir of local pride and interest which must be preserved. But even in the larger municipalities, in most of our cities, there are great opportunities for education in the responsibilities of citizenship. We have been terribly remiss in the task of making our citizens aware of even the most elementary facts of government. This task should be seriously commenced no later than in our high schools, with particular emphasis placed on local government, an emphasis which has been almost totally lacking.

This emphasis should be maintained and accelerated at the college level, and especially localized in those institutions whose students come from the surrounding region. These students usually return to their communities to become their business and professional leaders. Too few of them, however, achieve political prominence. More would, if their interest in public service would be whetted by a wide background of interestingly presented information about their governments.

Thus, and only thus, will some of the current myths about public service and public officials be dispelled, faith in our system of government strengthened, its service improved and its standards raised, to the eternal benefit of all of our citizens.

In this, as in every other movement for the betterment of government, members of the bar must take their rightful places in the front ranks of the growing army of citizens who are coming to a realization of the transcendent importance of improving local government.