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## PRESENT COUNTY GOVERNMENT SYSTEM— BEST OF ALL POSSIBLE WORLDS?

WILLIAM J. BAUER\*

**W**HEN THE Constitutional Convention ultimately convenes, it faces absolutely staggering problems. The most newsworthy of the problems will be an overhaul of the Articles having to do with the fiscal policy of the state. I am morally certain that the items that will be most closely watched by the public will be those involved with revenue, particularly, on what basis and how, taxes may be raised. Obviously, however, a great number of other constitutional articles are important in that they vitally involve the future development of government in Illinois, and because they quite directly affect the economics of all phases of government.

The most significant level of government in our state is the county. Let me quote from the report of Professor Irving Howards of Southern Illinois University in his address of January, 1961 to the Assembly of Local Government at Monticello, Illinois:

Historically, the county in Illinois, in common with counties throughout the United States, has been considered an administrative extension of the state. One of the more famous elaborations of this principle resulted from the decision in the case of *Cook County v. Chicago* in 1924, when the State Supreme Court declared that county and township organizations "are created in this State with a view to aid in carrying out the policy of the State at large, for the administration of matters of political government, finance, education, taxing, care of the poor, military organizations, means of travel, and the administration of justice." The Illinois county, in line with this dictum, does indeed perform basic functions for the state.

Police protection, the prosecutor's office, the court system, the recorder of deeds, the county clerk, the county treasurer, and other offices all function under the auspices of county government. The con-

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stitutional provisions relating to the county government will, therefore, be of particular significance to the Constitutional Convention. Let us examine some of the present provisions of the Illinois Constitution as they relate to county government.

Article X is divided into thirteen component sections, not necessarily in order of importance to the public. The first section recognizes that one of the vital problems relating to effective government has to do with tax-income potential and, apparently, on the theory that the smaller the land mass unit, the more difficult a firm tax base, the section forbids the formation of a county of less than four hundred square miles. Geographic area is, of course, one way of guessing in advance what the value of a land mass might be, but experience has demonstrated that it is a poor way of establishing total value for tax purposes. It is interesting to note that many counties have less than the four hundred square miles and these include some of the wealthiest counties in the state.

It is true, of course, that the economic stability of a county will depend on the potential tax base available for income. A more realistic approach to limiting size would seem to encompass both land mass and population. One excellent yard stick of economic health has to do with population and its increase and decrease. Some provision should be made for the combining of counties when it becomes obvious that the economic status of any county cannot support a county government.

Sections 3 and 4 allow counties to be formed or reformed only if a vote of the majority of voters involved in the change approve such changes. However democratic these provisions might ring, they are totally inadequate for solving the problem. The more prosperous counties will quite understandably not choose to extend their tax base to any stricken brethren. The current result of this problem has been solved by (1) shifting part of the burden of governmental service to the state, (2) shifting part of this burden to the federal government, (3) failing to provide any effective type of county government, or (4) a combination of all three of these "solutions." So, in the end, the more prosperous of our people are forced to subsidize the poorer. It would certainly seem obvious that a release of the strain on both the state and federal budget might be sought by requiring counties to justify their existence economically or be merged into units that could function economically. Some provision for such merging would not

be a problem constitutionally, providing some form of judicial review is spelled out.

Section 4 of Article X only has to do with the establishment or removal of the county seat and no real reason exists to tamper with the provisions except that, in any merger of counties the determining body should be in a position to designate the county seat in the ultimate governmental unit that results.

Section 5 has immense significance, since it provides for the establishment of the county government. The Illinois county consists of a fantastic number of boards, commissions, offices and employees. In its essential features section 5 provides for a method of establishing the township form of government, or, in the absence of township government, the existence of a commission form of government.

Does the township form of government really have a right to exist in 1968? It was obviously designed to meet the needs of a rural society in 1870. It provided for a method of local law enforcement, judiciary, road building, tax assessing, taking care of the poor, and other functions. Is it necessary, or even economically possible, to have these functions exist on a township level? Would not a county assessor be more efficient when considering overlapping taxing districts and would not a county road program be more efficient in cost and upkeep, and a more intelligent way to coordinate all roads throughout the state?

We have finally abolished the township justices of the peace and constables and now we should be in a position to face up to the problems remaining with some degree of realism. It is not a blow to "local government" to insist that there has been a new definition of "local government" made necessary by the changing times. The simple fact is that the township form of government has, in most cases, been the biggest single handicap carried by county government itself. Huge unworkable county boards with many suffering from inverted sectionalism and overlapping of costs and services are only some of the problems that can be corrected by a new approach to the township form of government.

The structure of the county is burdened further by the possible existence of nine different boards (other than the county governing board and the boards of review), ten miscellaneous agencies and a judicial advisory council. These boards include county boards of health for the non-township county, county boards of health established by vote of the county, boards of directors for county tuberculosis sani-

tariums, boards of directors for soldier's and sailor's burial grounds, county boards of education, boards of zoning appeals, retirement boards, county library boards, and county boards of visitation. The miscellaneous agencies vary from the responsibility of the superintendents of county homes to the cemetery trustees.

The report of the County Problems Commission to the governor in 1963 carried this language following a discussion of the representation figures in counties having the township form of government:

The inevitable result of this kind of representation is an inordinately large board. In Illinois the township county board, based on the 1950 census, varies in size from four to forty-nine members. The median size of the township county board is twenty-one. Twenty-four counties have boards of thirty or more members.

The structure and functions of the county and township in Illinois are bound as we have seen to the rigid theoretical base of subservience to the state enunciated in *Cook County v. Chicago* and implemented by innumerable constitutional and statutory provisions. The end result is an extremely complicated and delimited structure circumscribed to such an extent that experimentation is difficult.

All of this is not to say that the commission form of government has produced a model form as presently established. I would presume, however, that some balance of representation between urban and non-urban population can be established and it must be a flexible formula that can meet changing conditions. A reflection of the conditions might well be established by the federal census figures. It would seem intelligent to stagger the terms of the members of the county governing body but annual elections would not seem necessary.

Section 7 (applying to Cook County only) with its inflexible rule of ten commissioners from inside the city and five members from outside does not seem to be related to reality. A ratio of in-city out-city members based on the preceding census would be more in keeping with today's political philosophy. The divergent needs of the City of Chicago and the remaining area of Cook County might be better served with a more realistic representation.

One possible area of improving county government that deserves serious consideration, and should be at least a constitutionally permissive avenue for individual counties, is the county-administrator form of government. Just as cities and villages throughout the country have found it advantageous to use the village or city-manager format, so have many counties. The County Problems Commissions has prepared a study of the various county-administrator programs presently in operation and their findings would be available to the Convention. It

would be a sufficient comment to state that by 1963 twenty-seven states permitted either an elective or appointive county executive officer.

Section 8 has been made obsolete in some particulars by the amended Judicial Article and could certainly stand some additional revision. County judges, of course, no longer exist and the continued existence of some of the elected officials might well be a subject for re-examination. For instance, is this not an appropriate time to replace the office of coroner with a more realistic position of medical examiner? Historically, the office of coroner was used to determine cause of death of persons within the county. Medical science has now advanced to the point where electing a person, usually a lay person, to solemnly deliver a pronouncement as to the cause of death is both absurd and dangerous. The Illinois practice impaneling a jury of six people to investigate the cause of death is even sillier—it multiplies the problem. An obvious danger occurs in a possible homicide case where the police, the state's attorney, and the coroner are usually engaged in stepping on each other's feet to the detriment of good law enforcement. Many states have abolished the position of coroner altogether; New York has provided that the county boards may abolish the elective position of coroner and establish an appointive medical examiner. It might well be that this approach would be the best solution in Illinois. Certainly a flexible policy would permit the counties to judge their own needs and to tailor their program to meet those needs. More than half the states in the union have revised or abolished the concept of coroner since the present Illinois Constitution was adopted. The Constitutional Convention seems like an ideal time to review the whole problem of the office of coroner.

Another provision in section 8 involves an important item that should be carefully considered; the prohibition against the sheriff and treasurer holding successive terms. On more than one occasion the voters of Illinois have rejected an amendment permitting the two offices to stand with other offices in the rights of succession, but each year the reasons for permitting the right of re-election become stronger and the arguments against the permission became less compelling. Taking the sheriff's office alone, the prime necessity of building and maintaining a professional police organization while requiring that the top officer be changed every four years, regardless of ability or competence, is an impossible task. Even in those counties which have established the merit system for deputies, a mandatory change

in the person responsible for setting policy has failed to provide a decent vehicle for promoting good law enforcement. No city or village could decently function by firing the chief of police every four years without any cause or logic. The elective system alone should provide the people with an opportunity to "fire" a bad sheriff but the present system frequently prevents the voters from selecting the best possible candidate by eliminating his right to run.

One of the more disagreeable results of the re-election prohibition has been the necessity that each sheriff and treasurer faces of "shopping" for a new job during all or most of his term of office. Rather than being able to devote his time to building the best and most efficient department, either as sheriff or treasurer, these office holders as a matter of self-interest, must constantly seek a new place to make a living on the expiration of their term. Additionally, the constitutional disability obviously discourages many excellent potential candidates from ever seeking these offices. Government service has attracted good men from private life, in spite of an inherent inability to compete with private business in the area of wages; when the possible security of a job well-done is denied, the attraction to public service becomes an impossible burden. The Convention can correct this problem.

Section 9 has provisions that badly need re-examination. The inherent horror of a fee system was recognized and eliminated in the judicial branch of government some years past. The fee system is less obviously bad, but equally unworkable, in the other branches of government and should be eliminated as a basis for county operation. It is really not necessary to re-define all the basic things wrong with a fee system form of government but some matters should be kept in mind by the convention. Let us take a look at the offices involved.

Presently section 9 and section 10 provide that the sheriff's salary, and the expenses of his office shall be paid only from the fees of his office. In short, the entire program of county law-enforcement depends on whether the law-enforcement office is "making itself pay." Every movement made by the sheriff, every investigation he must or should undertake, is limited by the "earnings of the office." In those counties where there has been a rapid expansion of population and therefore a rapid expansion of the demand for the services of the sheriff, the problem has been acute; in the counties where the population has been decreasing, the problem is intolerable.

As to the other fee earning offices, the situation is almost equally bleak. The County Problems Commission reported some years ago that a survey of coroners' offices throughout the state showed that many cases where an autopsy seemed to be called for remained uninvestigated because the earnings of the office would not support such an operation and the county boards were reluctant to pay the bills from the general fund.

In an effort to produce a "profit," it would seem an obvious temptation to reduce office efficiency by a reduction in office personnel or by setting salaries in a category so low that the good employees are not attracted at all. Incidentally, since the "expenses" of the office are also limited by the earnings, a goodly number of these offices are unable to take advantage of the fine equipment now available to increase the services of government and, over a long run, decrease the costs. There is no real reason to require that each of the various needed offices of government justify its own existence. The fee system, with all its major and minor drawbacks must be abolished if county government is to continue at all.

Section 12 has one manifestly foolish requirement: it limits the classification of counties to three categories. Considering the fact that thirteen counties have less than 10,000 people, that 28 counties, between 10,000 and 20,000 people, and the rest of the counties excluding Cook progress upward in population to numbers in excess of 300,000, a three-classification limit is unduly restrictive. Many states in the union permit classification of counties almost without restriction and it seems obvious that a greater flexibility is necessary to provide for the varying needs of the widely different counties of the state. Nor does classification purely on the basis of population seem particularly intelligent or necessary as a constitutional requirement. Some recognition of differences in classification based on urban-rural ratios might well be more sound and could be left, with wide guidelines, to future legislative action.

Section 13 presently provides for semi-annual reports of the fee-earning offices to "some officer designated by law." Is it not more sensible to require all offices to make annual reports to the governing body of the county and have that body make a total comprehensive report to the office of the chief executive of the state? There really seems to be no other way, other than a variation of the type of report and

time of reporting, for intelligent planning to meet present and future needs of county government.

At any rate, a Constitutional Convention must, if it is to be at all effective, approach the entire problem of Article X with a fresh point of view uncluttered by a belief that the present county government system is the best of all possible worlds. The present system is clanking along, patched together by makeshift rules and laws, unduly inhibited by constitutional "shalts" and "shalt nots" and altogether heading down the road to fiscal and governmental chaos. The situation is in desperate need of a total overhaul.