Local Governmental Reform and the Jurisdictional Problem: A Legal Blueprint

James E. Herget

Follow this and additional works at: https://via.library.depaul.edu/law-review

Recommended Citation
James E. Herget, Local Governmental Reform and the Jurisdictional Problem: A Legal Blueprint, 18 DePaul L. Rev. 119 (1968)
Available at: https://via.library.depaul.edu/law-review/vol18/iss1/5

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.
LOCAL GOVERNMENTAL REFORM AND THE JURISDICTIONAL PROBLEM: A LEGAL BLUEPRINT

JAMES E. HERGET*

INTRODUCTION

A great deal has been written about the jurisdictional problem in metropolitan areas.¹ Some of this material deals with very limited aspects of the problem. Other articles report on what has historically been done in particular localities.² Still other sources discuss general policy and theory.³ But there are few sources for the lawyer to draw from when he seeks to tackle the sticky legal problems which come to the fore when a proposal for metropolitan government is made. It is the purpose of this paper to expose the more important guideposts of the law, and to suggest ways of accomplishing the desired ends, within an existing institutional framework. It is felt that once the reader has worked his way through the maze, he will be in a better position as either an advisor, legislator, or draftsman, to deal effectively with the legal aspects of the jurisdictional problem.

Although the problem is indigenous to almost every state in the nation to a greater or lesser degree, the history, geography, governmental structure, and state constitution of each locality differs. Thus, if we try to make our discussion applicable to the nation as a whole, it becomes very difficult to come to grips with concrete problems. For this reason, we shall mainly concentrate on one jurisdiction, the State of Illinois,

* Mr. Herget is an Assistant Professor of Law at the University of Tulsa Law School. He received both an A.B. and LL.B. from the University of Illinois. He is a member of the Illinois Bar.


and one locality, the Chicago area. That particular metropolitan area merits our attention, not only because it reflects the jurisdictional problem at its worst, but also because the Illinois legal framework is a typical one, and the legal experience is rich in both innovation and precedent. Therefore, a study of the legal aspects of metropolitan government in this particular locality should be illuminating for other localities as well.

This article is written on the assumption that some type of legal reform in the government of metropolitan areas, and the Chicago area in particular, would be beneficial. This point of view is not, of course, universally shared. However, any discussion of reform in the structure of local government must be made within the context of some realistic limits. Obviously, if it were readily in our power to change the federal constitution, the state constitution, the attitudes of local politicians with vested interests, and numerous other imponderables, there would be no legal problems to worry about in refashioning the governmental apparatus. Fortunately, perhaps, the power to effect such sweeping changes is diffuse and difficult to call forth. Hence, in the following discussion certain assumptions are made for purposes of realistic analysis. These assumptions are: (1) that reform must take place within the present constitutional framework; (2) that the financial resources of local government will remain substantially the same, i.e., property taxes and charges for services will account for the bulk of the revenue; (3) that the dissolution of existing governmental bodies will be strongly opposed by powerful interest groups, primarily the office holders in those bodies. All this is not to say, of course, that constitutional amendment is always impossible, or that the local partisans cannot ever be enlightened so as to appreciate the big picture, or that citizens can never be made to appreciate novel innovations. These things can be, and have been done, but only with herculean effort and unusual leadership.

THE PROBLEM

Although the term "metropolitan area" is used meaningfully in normal discourse, it is a vague and imprecise phrase. Social scientists

---

4 For an excellent and comprehensive report, although now somewhat dated, on the informational background of the Chicago problem, see Governmental Problems in the Chicago Metropolitan Area (L. Lyon ed. 1957).

5 See the able discussion in Banfield and Grodzins, Government and Housing in Metropolitan Areas ch. 2 (1958).
and statisticians have advanced definitions of varying complexity, but for purposes of this discussion we may define it as an integrated economic and social unit with a recognized population nucleus of 50,000 or more. This rather broad and diffuse definition is sufficient to include the federal government’s Standard Metropolitan Statistical Area (hereinafter SMSA). By an “integrated economic and social unit” is meant a territorial area in which the residents are dependent upon others in the same area for jobs, recreation, transportation, food, news and entertainment, etc., on a daily basis. With respect to the Chicago area itself, this integration has been characterized in the following way:

Metropolitan Chicago . . . has many different sections performing a variety of functions. It has a number of different types of communities. Within it there is a variegated pattern of physical, social, and economic interaction which transcends the corporate limits of its municipalities, the lines defining its counties, and the boundary of Illinois and Indiana. People move freely across these lines to and from work, shopping, recreation, and visits with friends. Money may be earned in one locality, spent in another, and banked or invested in another. The raw material for a product may be processed in one location, its parts assembled in another, and its distribution handled from a warehouse in another.

It is true, of course, that there are different “communities” within any particular territory. These “communities” may be oriented along social, religious, professional, geographical, ethnic, economic, or other lines, so that it admittedly is a difficult practical problem to define with any precision the overall integrated metropolitan area.

It may be fairly said, however, that the typical metropolitan area today consists of a densely populated core city surrounded by numerous suburbs and stretches of unincorporated area. Superimposed upon this patchwork of municipalities are one or more counties, numerous townships, several school districts, sanitary districts, park districts, airport authorities and other ad hoc governmental bodies. In 1962, there were 1,060 such governmental units in the Chicago Standard Metropolitan Statistical Area (995 of which had the power to tax property). Comparable figures for other areas show the St. Louis SMSA with 482

---


7 GOVERNMENTAL PROBLEMS IN THE CHICAGO METROPOLITAN AREA 21 (L. Lyon ed. 1957). The reader should note that this paper does not attempt to deal with the interstate aspect of the problem.

8 This problem is dealt with comprehensively in Reiss, The Community and the Corporate Area, 105 U. PA. L. REV. 443 (1957).
governments, Pittsburgh with 806, New York with 555, and San Francisco with 346.9

Since the metropolitan area is by definition an economically and socially integrated unit or community, we can readily see the possibility that community-wide problems may arise to which there is no community-wide governmental machinery to respond. This has been called the "disjuncture between the metropolitan community and the corporate areas which serve it." Putting it another way, the fractionation of local government in metropolitan areas itself creates a separate political and legal problem, the jurisdictional problem.

Examples of this jurisdictional problem come to mind readily. Calumet City, Illinois, can do nothing about its highly polluted air because the pollution originates at steel mills and oil refineries in nearby Gary and Whiting, Indiana. The City of Chicago may have an adequate water supply from Lake Michigan, but the suburb of Elmhurst may have to pay very dearly for the same commodity. A particular suburban area may have excellent physical facilities for its schools and highly-paid teachers because there is a substantial industry to form a good tax base in the school district, yet a neighboring school district covering what are essentially high density "bedroom" communities may struggle to make ends meet. The police force in a small suburb may consist of one constable and a night deputy, both untrained, ill-equipped, and poorly paid. The same suburb probably has a volunteer fire department; yet, there is no way to pay for anything better. These examples could be multiplied at great length in the areas of planning and zoning, mass transit facilities, and sewage facilities.

What has been termed here the "jurisdictional problem" is really a set of interrelated consequences, flowing from the atomization of local governments. These might be enumerated as separate problems in the following categories:

(a) **Territorial Limitation.** Any particular governmental unit is unable by itself to meet an area-wide problem. (*Example:* air pollution).

(b) **Inefficiency.** There is inefficiency in the performance of public services because the scale of governmental operation is too

---

small or because of duplication (Example: the one-man police force, separate water filtration plants in adjoining villages).

(c) **Inequitable Financing.** There arise inequities in the tax base between different corporate boundaries even though the entire area is economically and socially interdependent (Example: the adjacent rich and poor school districts).

(d) **No Responsibility for Resolving Conflicting Interests.** There is a lack of any effective planning and budgeting agency which can weigh the demands for various public services against the available tax dollars, and make intelligent decisions on priorities for the community as a whole.

(e) **Failure to Accommodate Growth.** No provision is made for future growth so that, as new territory becomes economically and socially integrated into the metropolis, it also becomes politically and legally integrated.

Can anything be done about the multiphase jurisdictional problem? A number of solutions have been proposed, and some have been tried.

**PROPOSED SOLUTIONS**

Let us first review solutions to the jurisdictional problem which have been proposed or adopted from time to time, but are not very adaptable to the Chicago metropolitan area or, for that matter, to most other metropolitan areas. It should be noted, however, that some of these solutions have been successful in varying degrees in some circumstances.

(1) **Intergovernmental Contracting.** This has been moderately successful in some areas in meeting problem (b) above, particularly where the service contracted for (e.g. water supply) is one which brings in its own operating revenue. However, this device usually does not help in solving problems (a), (c), (d), or (e).

(2) **Single Purpose Authority.** Creation of an authority (sanitary district, port authority, airport authority) to serve an entire

---

10 The City of Chicago sells water at a “wholesale” price to a large number of suburbs. *Governmental Problems in the Chicago Metropolitan Area* 90 (L. Lyon ed. 1957).

DE PAUL LAW REVIEW

metropolitan area (seldom found) can successfully solve problems (a), (b), and (c); however, it intensifies problem (d) and makes it even more difficult to solve. It does not meet problem (e).

(3) **Annexation.** Although still possible in the case of a few of our larger cities, annexation of suburban territory by the core city is simply a political impossibility in most places, certainly in Chicago.\(^{12}\)

(4) **Area Planning Commission.** This device helps to meet problems (a), (d), and (e), but the practical value of such commissions is severely limited in that they act in an advisory capacity only. In Illinois, the Northeastern Illinois Planning Commission has been created to plan for a six-county area around Chicago, but the Commission has no power to implement its planning decisions.\(^{13}\)

(5) **State Assumption or Regulation.** Assumption of some of the governmental powers or services of the metropolitan area by a state agency or department can be helpful in limited activities such as highway development, traffic codes, and court systems. However, any extensive attempt by the state as a whole to dictate what has traditionally been local policy will run counter to the public sentiment which attaches to such ideas as home rule, local option, and local self-determination. In addition, in Illinois (and some other states as well), such action probably would either violate the constitution or upset the entire local tax structure.\(^{14}\)

Having rejected the foregoing solutions as unworkable, let us proceed to delineate the more promising alternative. It would appear that

---

\(^{12}\) The Illinois annexation provisions are found in **ILL. REV. STAT.,** ch. 24, §§ 7-1 and 7-2 (1967).

\(^{13}\) **ILL. REV. STAT.,** ch. 85, § 1117 (1967). Section 17 of the act, pertaining to powers of the commission, states:

In the exercise of these powers or of any other powers granted to it under this Act or specifically under any other law, the Commission shall act solely as an advisory body to units of government, to agencies of the State and Federal governments, and to interested persons; its plans, policies, research findings and recommendations shall have no binding effect on such units of government, agencies, or persons . . . .

\(^{14}\) The constitution provides:

The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes . . . .

**ILL. CONST.** art. IX, § 10. See **People v. Central Ill. Pub. Serv. Co.,** 328 Ill. 440, 159 N.E. 797 (1928).
any real solution to the jurisdictional problem will require the existence of some sort of super-government with substantial powers. This could theoretically be a single government for the entire metropolitan area which supersedes and replaces all existing governments. Or it might take the form of a federation or added layer of government wherein most of the existing bodies maintain their identity. The former alternative was adopted in Colorado for the Denver metropolitan area in 1902 by an amendment to the state constitution. However, this is a politically drastic method of meeting the problem, and other localities have found it expedient to use a more gradual or federated approach. The form or structural unit which is utilized as the super-government could be the county, a merged city-county, or a metropolitan special district (or authority). The essential thing is that the super-government be organized and empowered, so as to meet problems (a) through (e) outlined above.

THE LEGAL CONSIDERATIONS

STRUCTURAL ALTERNATIVES

The City. Although annexation was rejected earlier as a possible solution to the jurisdictional problem in the Chicago area, it should be pointed out that there is a specific constitutional provision which in theory would allow extension of the city to cover the metropolitan area and would also allow for consolidation. This part of the constitution, known as the “Chicago Home Rule Amendment,” was adopted in 1904. In practice it has proved of little value, and dissatisfaction was articulated as early as 1915. The basic problem seems to be political rather than legal, although it stems from the requirement in the constitution that separate majorities must be achieved both in the City

15 Colo. Const. art. XX, § 1.
16 E.g., Dade County (Miami), Florida; St. Louis, Missouri; Los Angeles, California; Toronto and Winnipeg, Canada.
17 See Fla. Const. art. 8, § 11.
20 Ill. Const. art. IV, § 34.
of Chicago and in the area to be annexed, in order to effect annexation. Because the obstacles here have been proved by time to be formidable, and are essentially political, this paper will not deal further with this possibility.

The County. In considering a structure for the super-government, the county immediately suggests itself as a likely possibility. In Illinois, as in most states, the county has been basically an administrative subdivision of the state rather than a local government formed to deal with local problems. Increasingly, however, new and significant powers have been given to the counties, and there appear to be no impediments toward delegating even greater powers. Article X of the Illinois constitution provides for county organization and establishes the offices of county clerk, sheriff, treasurer, circuit clerk, and recorder of deeds. Because of their constitutional basis, these offices could not be abolished or placed under the direct control of a county legislative body (commissioners or board of supervisors) without constitutional amendment. However, with respect to the bulk of local governmental functions which are not attached to those offices, there appears to be sufficient flexibility to permit the organization of an effective super-government. It should also be noted that the constitution specifically requires the legislative body of Cook County to be composed of ten persons elected from the City of Chicago, and five persons from outside the city.

This brings us to a consideration of the usefulness of the county as a super-government in the Chicago area itself. Assuming that the state constitution will allow delegation to the county of sufficient powers, and that the county can be adequately organized, a further and greater problem arises. Whatever definition of metropolitan area is used, it is clear that the Chicago metropolitan area now extends beyond Cook County. More than one million people live on the periphery outside Cook, and that periphery is, of course, the fastest growing area. Therefore, in order to use the county as the basic super-government for the whole metropolitan area, there must be a merger of several

22 See, e.g., power to zone, ILL. REV. STAT. ch. 34, § 3151 (1967).
23 ILL. CONST. art. X, § 8.
24 See, e.g., People v. Board of Comrs., 397 Ill. 293, 74 N.E.2d 503 (1947).
26 See U.S. BUREAU OF THE CENSUS, COUNTY AND CITY DATA BOOK 82, 92, 618 (1967).
counties, or Cook must be enlarged by a transfer of territory from the adjoining counties.

Here we run afoul of certain constitutional provisions. First of all, no county can be reduced in size to less than 400 square miles. DuPage, directly adjoining Cook to the west and the most populous of the peripheral counties, is already less than 400 square miles in area. Lake, to the north and the second most populous county, has only 457 square miles. The same problem is presented to a lesser degree with the other peripheral counties. Thus, it is impossible to transfer any significant amount of territory to Cook County without violating this constitutional provision.

A merger of the counties involved is the other alternative. But a merger of counties can be accomplished only by obtaining a majority vote in favor of merger in a popular referendum in each county. This creates an extremely difficult political problem since the failure to achieve a majority vote in one or two out of six counties could ruin the entire scheme. All of the counties, except Cook, also have rural areas of varying extent, and the inhabitants of those areas, though in the minority, could significantly affect the outcome of an election. This rural vote would most likely be opposed to inclusion in a metropolitan super-government. In addition, the partisan lines are clearly drawn as well. Cook County is traditionally a Democratic stronghold, and the peripheral counties are usually heavily Republican. Therefore, from a political standpoint, the odds in favor of a county merger are rather remote.

Finally, it should be pointed out that the inherent difficulty in utilizing the county as the organ of metropolitan government is that the county line almost never coincides with the area of the metropolitan community. A quick glance at a map of the Chicago area will show that while the Cook County boundaries are not large enough to encompass

---

27 Ill. Const. art. X, § 1.

28 For references to the figures see note 26, supra.

29 See Ill. Const. art. X, §§ 1, 2, 3. These provisions do not specifically provide for referenda in each county in the merger situation. However, taken together, that is their most probable effect. This was so held in People v. Marshall, 12 Ill. 391 (1851), which was decided under identical provisions of the constitution of 1848, the forerunner of the present constitution.

30 Note 26, supra.
the metropolis, the combined area of Cook, DuPage, Kane, Lake, McHenry and Will (all included in the SMSA) is much too large.\textsuperscript{31} 

\textbf{The Metropolitan Authority}. The formation of a metropolitan "service district" or metropolitan "authority" as a new and distinct governmental entity holds much greater promise than the county as a structure for the super-government. It seems well established that the legislature has comparatively unlimited power to create any type of local governmental body which circumstances may require. In the leading case of \textit{People v. Bowman},\textsuperscript{32} the creation of a sanitary district was upheld against the contention that the legislature had exceeded its powers. The court said: 

The constitution contains no prohibition against the creation by the legislature of every conceivable description of corporate authorities, and the endowment of them, when created, with all the faculties and attributes of other pre-existing corporate authorities. \ldots Nor is the General Assembly, in exercising its power to authorize the organization of municipal corporations with powers of taxation for corporate purposes, limited by the boundaries of pre-existing corporations or compelled to adopt their corporate authorities.\textsuperscript{33} 

A number of innovative governmental structures have accordingly been upheld by the Illinois court including the Chicago Transit Authority,\textsuperscript{34} the Chicago Regional Port District,\textsuperscript{35} and local airport authorities.\textsuperscript{36} \textit{Federation}. Although there is no legal objection to the creation of an additional top layer of government in the form of a metropolitan authority, we are still left with a miniature federal problem. Thus, the question becomes which powers or functions should be allocated to the super-government, and which should remain with the existing cities, counties, and special districts.\textsuperscript{37} At one extreme, the cities and special districts could be abolished and the counties' functions curtailed to the constitutional minimums with an all-powerful metropolitan authority.

\textsuperscript{31} This problem is not peculiar to the Chicago area. 117 out of the 228 SMSA's extend into more than one county. U.S. Bureau of the Census, \textit{Statistical Abstract of the United States} 941-944 (1967).

\textsuperscript{32} 247 Ill. 276, 93 N.E. 244 (1910).

\textsuperscript{33} Id. at 286, 93 N.E. at 248.

\textsuperscript{34} \textit{People v. Chicago Transit Authority}, 392 Ill. 77, 64 N.E.2d 4 (1945).

\textsuperscript{35} \textit{People v. Chicago Regional Port Dist.}, 4 Ill. 2d 363, 123 N.E.2d 92 (1954).

\textsuperscript{36} \textit{People v. Wood}, 391 Ill. 237, 62 N.E.2d 809 (1945).

\textsuperscript{37} For a discussion of this question primarily from an economist's point of view see Hirsch, \textit{Local Versus Areawide Urban Government Services}, 17 \textit{Nat. Tax J.} 331 (1964).
At the other end of the spectrum is the limited assumption of one function, e.g. sewage disposal, by the authority, with the pre-existing units retaining practically all their powers. It seems clear that the former extreme is undesirable as well as being politically unworkable, while the latter extreme does not effectively meet the jurisdictional problem. The functions to be performed by the metropolitan authority must be limited and yet substantial. Whether this can be done successfully may be questioned in view of the Miami, Florida, experience, in which litigation quickly developed over the "federal" issue.\[38\]

An example of legislation which appears to be politically workable and also amenable to the Illinois constitutional and legal framework as well as that of most other states can be found in the State of Washington.\[39\] There, in 1957, enabling legislation was passed to permit


35.58.260 Transportation function—Acquisition of city systems. If a metropolitan municipal corporation shall be authorized to perform the metropolitan transportation function, it shall, upon the effective date of the assumption of such power, have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which any component city shall have been previously empowered to exercise and such powers shall not thereafter be exercised by such component cities without the consent of the metropolitan municipal corporation: Provided, That any city owning and operating a public transportation system on such effective date may continue to operate such system within such city until such system shall have been acquired by the metropolitan municipal corporation and a metropolitan municipal corporation shall not acquire such system without the consent of the city council of such city.

35.58.265 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of employee benefits—Collective bargaining. If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such terminal and parking facilities and properties, together with all lands, rights of way, property, equipment and accessories necessary for such systems and facilities. Public transportation facilities and properties which are owned by any city may be acquired or used by the metropolitan municipal corporation only with the consent of the city council of the city owning such facilities. Cities are hereby authorized to convey or lease such facilities to metropolitan corporations or to contract for their joint use on such terms as may be fixed by agreement between the city council of such city and the metropolitan council, without submitting the matter to the voters of such city.

35.58.250 Other local public passenger transportation service prohibited—Agreements—Purchases—Condemnation. Except in accordance with an agreement made as provided herein, upon the effective date on which the metropolitan municipal corporation commences to perform the metropolitan transportation function, no person or
the formation of the Municipality of Metropolitan Seattle.40 Steps in organizing this super-government followed lines typical of special district formation.41 However, a unique feature provided by this legislation is that in the original organizing referendum, the voters are permitted to vote on the function or functions to be performed by the super-government and that additional functions may be given to the super-government through the device of subsequent referenda. As to the federal aspect of this governmental structure, the statute provides:

35.58.050 Functions authorized. A metropolitan municipal corporation shall have the power to perform any one or more of the following functions, when authorized in the manner provided in this chapter:

(1) Metropolitan sewage disposal.
(2) Metropolitan water supply.
(3) Metropolitan public transportation.
(4) Metropolitan garbage disposal.
(5) Metropolitan parks and parkways.
(6) Metropolitan comprehensive planning.

35.58.060 Unauthorized functions to be performed under other law. All functions of local government which are not authorized as provided in this chapter to be performed by a metropolitan municipal corporation, shall continue to be performed by the counties, cities, and special districts within the metropolitan area as provided by law.

private corporation shall operate a local public passenger transportation service within the metropolitan area with the exception of taxis, busses owned or operated by a school district or private school, and busses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the metropolitan municipal corporation and any person or corporation legally operating a local public passenger transportation service wholly within or partly within and partly without the metropolitan area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Where any such local public passenger transportation service will be required to cease to operate within the metropolitan area, the commission may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the commission shall condemn such assets in the manner provided herein for the condemnation of other properties.

Wherever a privately owned public carrier operates wholly or partly within a metropolitan municipal corporation, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law.

40 From the standpoint of political feasibility, it should be noted that the super-government actually formed in Seattle was authorized to perform only one function—sewage disposal.

The statute then provides in fairly elaborate detail a description of the specific powers of the metropolitan municipal corporation (super-government) with respect to each particular function which might be assumed.  

The foregoing enumeration of possible metropolitan functions in the Washington statute should not be taken as necessarily exhaustive. Planning and zoning are functions which need a comprehensive approach to avoid self-defeating inconsistencies in the metropolitan area. Certainly one of the greatest manifestations of the jurisdictional problem is in the field of police protection. If this function were given to the metropolitan super-government, as it probably should be, the office of sheriff would remain because of its constitutional basis. However, it seems likely that the sheriff could be limited as a practical matter to the functions of jailer and process server.  

The Governing Body. The legislature or policy-making body of the super-government could conceivably be constituted in any of a variety of ways, possibly including appointment by the governor. A number

---

42 E.g., Wash. Rev. Code § 35.58.240 (1967). Powers Relative to Transportation. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation, it shall have the following powers in addition to the general powers granted by this chapter.

1. To prepare, adopt and carry out a general comprehensive plan for public transportation service which will best serve the residents of the metropolitan area and to amend said plan from time to time to meet changed conditions and requirements.

2. To acquire by purchase, condemnation gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan transportation facilities and properties within or without the metropolitan area, including systems of surface, underground or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger terminal and operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization.

43 See Pock, Consolidating Police Functions in Metropolitan Areas 49 (1962).


45 See People v. Board of Comrs., 397 Ill. 293, 74 N.E.2d 503 (1947).

46 See Cornell v. People, 107 Ill. 372 (1883).
of politically interesting schemes of appointment and election have been upheld by the Illinois court as meeting constitutional requirements in the case of single-function governmental units.\textsuperscript{47} However, in the past, the only multi-function local governments have been the counties and the municipalities, and these have always had elected governing boards. This apparently does not reflect any necessity imposed by the state or federal constitution,\textsuperscript{48} but rather a general policy in favor of democratic self-government at the local level. A departure from this policy is certainly not suggested here.

However, if the super-government's policy makers are to be elected, then the recent decision of the United States Supreme Court in \textit{Avery v. Midland County} \textsuperscript{49} appears to govern. That decision, applying the one-man, one-vote principle to local government, would require that the governing board be elected from districts of substantially equal population within the geographic boundary of the super-government, or be elected at large from the entire area.

PROBLEMS OF CONSOLIDATION

The Method. In consolidating certain local governmental functions into one super-government, there appear to be two alternative methods. One method contemplates action by the state legislature alone, and the other contemplates enabling legislation coupled with a popular referendum.

Let us consider the former method first. There is a great deal of precedent in Illinois for the creation of a unit of local government by legislative fiat. The act creating a medical center district in Chicago simply declares the existence of the district in terms of the streets that border it.\textsuperscript{50} Similarly, the Chicago Sanitary District boundaries have been amended solely by act of the legislature almost fifty times, although the District was originally created through popular refer-

\textsuperscript{47} See, e.g., ILL. REV. STAT. ch. 42, § 301 (1967); ILL. REV. STAT. ch. 15 1/2, § 68.3a (1967); ILL. REV. STAT. ch. 105, § 219 ff. (1967).

\textsuperscript{48} Although the state constitution does provide alternatively for election of "county commissioners" or "township organization" which implies elected officials. ILL. CONST. art. X, §§ 5, 6, 7.

\textsuperscript{49} 390 U.S. 474, 484-85 (1968). The Court said: "We hold . . . that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body."

\textsuperscript{50} ILL. REV. STAT. ch. 91, § 125 (1967).
endum.51 The constitutionality of the Chicago Sanitary District was upheld at an early date against a number of claims of invalidity, the most serious being a charge of special legislation. The court held that since the constitutional provision prohibits local or special laws "incorporating cities, towns, or villages," it does not prohibit special laws creating municipal corporations other than cities, towns, or villages.52

Another example of the formation of a unit of government by legislative act alone is the statute creating the Chicago Regional Port District. This provides:

There is created a political subdivision, body politic and municipal corporation by the name of the Chicago Regional Port District embracing all townships numbered 36 and 37 of the United States Government Survey, situated in Cook County, Illinois, and Section 14 in township 37, range 11, of said government survey, situated in DuPage County, Illinois . . . .53

A further example of this method is found in the statute creating the Northeastern Illinois Planning Commission which simply states that the metropolitan planning area shall consist of all of the counties of Lake, Cook, Will, DuPage, Kane and McHenry.54

It should be noted, however, that none of these municipal bodies have general governmental powers, and, of the examples mentioned, only the Sanitary District has a taxing power. An attempt to question the validity of creating multi-function metropolitan authority on the grounds that such an entity would be more like a city, town, or village, might be made, but the argument seems weak, at least where a properly elected governing board is provided for. It is perhaps for reasons of policy rather than constitutionality that the second method of consolidation, enabling legislation combined with popular referendum, has been used more often.55

The second method immediately avoids the problem of special legislation since the enabling act can be phrased so as to be applicable to any locality in the state which has a need for a metropolitan government. Once the enabling legislation is put on the books, the ma-

52 Wilson v. Board of Trustees, 13 Ill. 443, 27 N.E. 203 (1890).
chinery can be put in motion at the local level in the same way that most special districts are now created. Typically, a petition is filed with the circuit court clerk asking that the unit of government be formed and setting forth the proposed boundaries. Notice is given, hearings are undertaken, modifications made, and finally an election is held and the results certified.

Here it should be pointed out that there is no constitutional requirement that separate majorities be obtained in each municipality, special district, unincorporated area, or county involved. This is true even though the creation of the super-government may take away important functions from the constituent municipalities, and may even abolish some special districts as well as alter the tax burden throughout the entire area affected. The issue was presented in modified form in People v. Kelly, which upheld the consolidation of 22 separate park districts, and some areas not included in park districts, into one large “Chicago Park District.” The enabling legislation there provided for a single referendum vote in the entire area of the proposed new district. Against the contention that the separate consent or vote of each of the several districts was required, the court said:

The electors in each of the twenty-two districts who participated in the election by which the Chicago Park District Act was adopted, by an overwhelming majority approved the mode of appointment of corporate authorities therein provided. The fact that fourteen of the small park districts, by adverse majorities averaging slightly over 500 each, voted against the adoption of the act, of itself confers upon them no rights and imposes upon them no burdens not equally possessed or imposed upon all the other districts involved. The method of corporate succession provided in the act by the legislature in the exercise of its constitutional power was approved by the electors of the entire area . . . and § 9 and 10 of art. 9 of the Constitution were not thereby infringed.

With respect to the United States Constitution, the issue seems to have been settled some sixty years ago. A Pennsylvania statute permitted for annexation or merger of contiguous cities by means of a combined majority vote in both cities. An election was held in the cities of Pittsburgh and Allegheny. The majority was against merger in the smaller city of Allegheny, but in favor of a merger in the combined

56 Id.

57 357 Ill. 408, 192 N.E. 372 (1934).

58 Id. at 418-419, 192 N.E. 372 at 376-377. See also Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847 (1935), and Town of Cicero v. City of Chicago, 182 Ill. 301, 55 N.E. 351 (1899).
vote, and the merger was accordingly effected. Against the contention that the statute deprived Allegheny voters of fourteenth amendment due process rights and violated the impairment of contracts clause of the United States Constitution, the Supreme Court upheld the Pennsylvania law. The court stated:

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences.

The Effects. Whichever method of consolidation is employed, a number of important consequences will follow which should be briefly examined. First of all, some special districts may be extinguished as separate entities, e.g., if the metropolitan authority assumes the function of sewage disposal, the facilities and operation of most or all sanitary districts will be taken over by the super-government. Based on the decisions in Kelly and Bowman, this consequence creates no constitutional problem. Secondly, some property owners in the corporate area of the super-government may experience a tax increase while others may enjoy a decrease. Thus, most of the property owners in an area presently unincorporated may strongly oppose the formation of the super-government, and yet the unwanted taxes may be imposed “without their consent.” It was argued that such action in the Chicago Park District consolidation amounted to a deprivation of due process and violated the equal protection clause of the constitution. However, in Kocsis v. Chicago Park District, a companion case to

60 207 U.S. at 178, 179.
61 362 Ill. 24, 198 N.E. 847 (1935).
Kelly, the court drawing an analogy to municipal annexation cases, held that no constitutional rights were infringed. The court said:

When two or more municipalities are combined, the resulting municipal corporation includes the persons and places of the several municipalities, and it has the same property and owes the same debts which they all had and owed. The identity of the component elements, in such cases, is lost and becomes absorbed into the new creation.62

A third, and related effect of consolidation is that the new super-government will probably assume the outstanding debts of the municipal entities which it supersedes and may impose a tax on all property in the metropolitan area to pay off these debts. Thus, a property owner may be taxed to pay off indebtedness which was not incurred for his benefit. This issue was squarely raised in the Kocsis63 case, and the court held that there was no violation of due process, equal protection, or the special privileges and immunities clause of the state constitution.

PROBLEMS OF TAXATION

The Federal Problem. Many of the functions which might be performed by a metropolitan government are income producing and can be financed through revenue bonds and user charges. This is certainly true of water supply and garbage disposal and probably applies to public transportation as well. Other functions in the planning and regulatory area (such as zoning) involve relatively nominal administrative costs which could easily be met from non-property taxes. However, there are other important functions which can basically be supported only by taxation, including such things as police protection, sewage disposal, and park operations.

Article IX, sections 9 and 10 of the Illinois constitution provide that while municipal corporations may be given the power to tax for corporate purposes, the legislature itself may not impose taxes upon municipal corporations or the property therein for corporate (local) purposes. In the early case of Morgan v. Schusselle64 these provisions were construed to mean that the legislature cannot require one municipal corporation to use its taxing power to pay off the indebtedness or expenses of another.

62 Id. at 31-32, 198 N.E. at 851.
63 Supra note 61.
64 228 Ill. 106, 81 N.E. 814 (1907).
In the context of our metropolitan government, this means that the super-government could not "assess" or require contributions from the cities and counties within its area in order to raise funds for metropolitan purposes. Although such a scheme of taxation has apparently been used elsewhere, the safest and most feasible taxing method under the Illinois Constitution would be to provide for a direct and uniform levy on all property within the metropolitan area for metropolitan purposes.

The Uniformity Requirement. The Illinois Constitution provides, as do most other state constitutions, that local governments with taxing powers must impose their property taxes uniformly throughout the corporate area with the exception of special assessments for local improvements. The rise of the special district as a device to finance local governmental projects and services on a tax base which cuts across traditional jurisdictional lines has led to a drastic modification in the operation of this constitutional provision. In effect, the special district is a method of taxing property for a service which benefits that property without regard to other jurisdictional factors, and yet the benefit to a particular piece of property is usually found to be more general and to be spread geographically broader than in the traditional case of a special assessment for a "local" improvement. Thus, in a metropolitan area neighboring properties may in fact be taxed at different rates because different corporate authorities have jurisdiction. Of course, in theory at least, the properties receive different benefits. This departure from uniformity in taxation has been held as not violative of the Illinois Constitution. In People v. Chicago and Western Ind. R.R. the Illinois court said:

The Constitution requires uniformity of taxation in taxing districts, and that is secured by regarding every taxing district as a separate unit,—the county for county taxes, the town for town taxes, the city or village for municipal taxes, the school district for school taxes, and any other district as a like unit.

The consolidation of a number of governmental functions into one super-government may thus create a problem of inequitable taxation. For example, the merger of several sanitary districts and the transfer

---

66 Ill. Const. art. IX, §§ 9, 10.
67 256 Ill. 388, 100 N.E. 35 (1912).
68 Id. at 392, 100 N.E. at 36.
of the sewage disposal function from some municipalities into one metropolitan authority, with one uniform tax, will alter the tax burdens on individual properties in the whole area. This result may very well be desired in many cases; indeed, as pointed out earlier, this may be one of the reasons for forming a metropolitan government. However, in other cases this result may not be desirable because only certain property or a certain limited area may benefit from a particular service or improvement, and yet the rest of the community would be required to pay for it.

The obvious solution to this problem is a liberal use of the device of special assessments for local improvements. However, the Illinois Constitution states that cities, towns and villages may levy special assessments. In the early case of Updike v. Wright it was held that drainage districts did not have such power. The court said:

The General Assembly can only vest cities, towns and villages with power to make local improvements by special assessments, or special taxation upon contiguous property benefited by such improvement. By necessary implication, it is inhibited from conferring that power upon other municipal corporations or upon private corporations. Only cities, towns and villages are within the constitutional provisions, and, although other municipal corporations may be vested with power to assess and collect taxes for corporate purposes, the limitation is absolute, such taxes shall be uniform in respect to persons and property within the jurisdiction imposing the same.

Following the Updike case, a constitutional amendment was passed which expressly gave the power of special assessment to drainage districts. Shortly thereafter, the Illinois court saw fit, by an interesting course of reasoning, to find that a park district was not prohibited from levying special assessments for local improvements. It was later held that sanitary districts also had this taxing power. The writer has been unable to find any further extension of these holdings to other types of local governments, probably because the need for such powers in other fields is not significant.

69 ILL. CONST. art. IX, § 9.
70 81 Ill. 49 (1876).
71 Id. at 53-54.
72 ILL. CONST. art. IV, § 31 (Amended 1878).
73 Dunham v. People, 96 Ill. 331 (1880); see also Van Nada v. Goedda, 263 Ill. 105, 104 N.E. 1072 (1914).
74 Taylorville Sanitary District v. Winslow, 317 Ill. 25, 147 N.E. 401 (1925).
75 The power has been given to River Conservancy Districts. ILL. REV. STAT. ch. 42, §§ 404, 405 (1967). For an authoritative early account of these developments see Wilson v. Board of Trustees, 133 Ill. 443, 27 N.E. 203 (1890).
Accordingly, the important question still remains, could our super-government be given the power to levy special assessments for local improvements? It certainly could be argued that a metropolitan authority of the kind contemplated in this paper is more like a city, town, or village than a special district in that it is a comprehensive local government with multiple functions. Hence, as a matter of construing the original intent of the framers of the constitution, the metropolitan authority should be given this power. In addition, it can be argued, as it was in modified form in the park district and sanitary district cases, the constitution should not be construed so as to freeze the forms of local government into molds appropriate to an earlier day. Finally, it should be noted that other jurisdictions have seen fit to construe practically identical constitutional provisions so as to permit municipal corporations other than cities, towns, and villages to levy special assessments. It seems clear that under the present constitutional framework the question is an open one.

Debt Limitation. Most states have a limitation on the amount of indebtedness which can be incurred by a municipal corporation. In Illinois, the limit is five per cent of the value of the taxable property in the corporate limits, and presumably this limitation would apply to our super-government. It is possible that in consolidating the debts of a number of local governments of different kinds the constitutional limit might be exceeded. However, in an inflationary era such as we have had for the past 25 years this possibility is remote. Indebtedness payable from specific user charges or from revenues from non-property tax sources (revenue bonds) are not within the constitutional limitation.

DRAWING THE BOUNDARY

Original Formation. Two questions are presented with respect to the boundaries of the metropolitan government: how should they be drawn in the first instance, and how can they be changed to accommodate future growth? The first question is related to the method chosen to form the super-government as discussed above. If the super-govern-

---

78 See, e.g., Foster v. Commissioners, 100 Wash. 502, 171 P. 539 (1918), construing WASH. CONST. art. VII, § 9. See also REV. CODE WASH. § 35.58.500 (1967).

77 ILL. CONST. art. IX, § 12.


79 People v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953).
ment is formed directly by act of the legislature as in the case of the Chicago Regional Port District, the determination of the original boundary could be made by that body. On the other hand, if the super-government is formed through enabling legislation and popular referendum, then the petitioners initiating the referendum could draw their own boundaries along statutory guidelines as is done in forming an airport authority or a park district. Once the original boundary is determined, it can be adjusted in a number of possible ways.

Changing the Boundary. It is clear that if present patterns of urban development continue, there will be a need to adjust and expand the boundaries of the metropolitan government from time to time. If no provision is made for this orderly expansion, the super-government will itself eventually become a "core city," and the jurisdictional problem will be regenerated. It is therefore important to devise a way of systematically expanding the area of the super-government as conditions require it. One possibility is to permit the metropolitan authority to annex contiguous territory solely by action of its own council or legislative body as has been done in some states. This would probably not contravene the Illinois Constitution (unless the county were used as the unit of super-government), but it is a drastic method since the property owners and residents in the area to be annexed, are given no voice in the matter.

Another possible device is to permit the legislature to amend the boundaries as it sees fit. This has the advantage of leaving the decision to a relatively impartial public body as opposed to leaving it up to the "annexors" or the "annexees," but such a cumbersome body is not properly constituted to handle this task. An improvement to this solution would be to create a specialized commission at the state level, whose business it would be to decide questions of annexation, merger, detachment, etc., and give the commissioners statutory standards as a guide. Minnesota has done this apparently with considerable success.

83 See, e.g., Neb. Rev. Stat. §§ 14-117 (1967). This was also formerly possible in Texas. See City of Houston v. State, 142 Tex. 190, 176 S.W.2d 928 (1943).
There is also the possibility that annexation or expansion could be made more or less automatic upon the existence of certain conditions. For example, it might be provided by statute, that if the area in question achieved a certain density of population, or was receiving a stipulated level of urban services, it could be declared a part of the metropolitan authority by action of the metropolitan council, either on its own initiative or on the initiative of residents of the area. Such a declaration would, of course, be an administrative action subject to judicial review, and would be somewhat analogous to rezoning an area in a city. There appears to be no constitutional objection to this type of system, provided adequate standards or indexes are provided to make the determination a factual one. Indeed, there is a very early case which upholds a similar procedure (although there, complete discretion was given to the municipality). In *Covington v. East St. Louis,* the city had a charter (issued prior to the present constitution) which provided:

Any tract of land adjoining the city of East St. Louis, laid off into city or town lots, a plat of which being duly recorded in the recorder's office of St. Clair county, shall be and form a part of the city of East St. Louis: Provided, the city council shall, by ordinance, so declare. The court held that an annexation made under this provision did not violate the constitution.

It is suggested that either an automatic system like that proposed above, or the Minnesota plan, so organized as to favor expansion where needed, should be utilized to adjust the boundaries of the super-government rather than more conventional annexation procedures. This would help avoid regenerating the jurisdictional problem which the super-government is designed to solve.  

*Multiple Boundaries.* It is very likely that the most appropriate area for the metropolitan authority to exercise its jurisdiction with respect to sewage disposal, will not be the most appropriate area for water supply, police protection, or land-use regulation. The question may thus be raised, could the super-government operate with several boundaries, each serving one governmental function? The answer is yes and no. In the case of tax supported activities, the uniformity

---

85 78 Ill. 548 (1875).
86 Id. at 550.
87 Id. at 553.
requirement of the constitution would appear to make the boundary for all general taxation coincide with the boundary for political representation, and this is "the boundary" of the corporation. However, with respect to revenue-producing services which are basically self-supporting, there is no objection to extending the services on a contract or cooperative basis beyond the area of the super-government.

There is probably room for some flexibility, however, in the exercise of governmental functions on the periphery of the metropolitan area. The Illinois legislature has recognized the necessity for authorizing some extraterritorial powers for cities such as purchasing, condemning, and constructing airports, water supply, and sewage facilities beyond the city boundary and permitting cities to zone one and a half miles beyond their borders. Statutory provisions like these have been upheld in many jurisdictions. Hence, it is quite likely that the metropolitan government could be given all of the extra-territorial powers which it may need.

CONCLUSION

There are no major legal obstacles to solving the jurisdictional problem in the Chicago area, although the state and federal constitutions impose certain requirements and limitations in the establishment of a metropolitan government. The outline of the most promising structure seems clear. A "Metropolitan Authority" can be formed by a single referendum held throughout the metropolitan area. The governing body of the new government would be elected on a one-man, one-vote basis. The powers of the metropolitan authority would be substantial but limited and clearly differentiated from those powers

88 Ill. Const. art. IX, §§ 9, 10.
89 It seems unlikely that the uniformity requirement would permit the division of the metropolitan area into a "general service district" and an "urban service district" with different tax consequences as is done in the Tennessee metropolitan legislation. See Tenn. Code Ann. § 6-3701 (1967).
90 See Governmental Problems in the Chicago Metropolitan Area 90 (L. Lyon ed. 1957).
94 See, e.g., White v. City of Decatur, 225 Ala. 646, 144 So. 873 (1932).
left to the municipalities. Power of taxation can be given to the authority to be exercised uniformly over the entire metropolitan area, with the possibility that special assessment districts can be created for local improvements. Provision can be made for the orderly and necessary expansion of the metropolitan government. A large number of local governmental units will be merged and lose their separate identities, and the cities and counties will give up some of their powers.

Since the legal problems are few and the method is visible, perhaps at this point the question should be answered as to why metropolitan government has not already been instituted in the Chicago area and similar localities. The answer is partly political, and that aspect of it cannot be dealt with here. However, part of the reason seems to be that a number of half-way measures have been taken to meet the jurisdictional problem which have been moderately successful. These measures, or governmental devices, have been referred to throughout this paper. They are such things as the Chicago Transit Authority, the Chicago Sanitary District, the Chicago Regional Port Authority, and the Northeastern Illinois Planning Commission. None of these devices is comprehensive enough as presently constituted to serve the entire metropolitan area except the Planning Commission, and its grave defect lies in being purely advisory. But the basic deficiency in this method of approaching the jurisdictional problem is that it substitutes vertically fragmented government for horizontally fragmented government. There is still no politically responsible body which can control the way in which the tax dollar is spent or services are rendered. It seems clear to this writer that as time goes by, a more fundamental and straightforward solution to the problem will be required in the Chicago area and in many other urban centers throughout the country.