County Home Rule: An Approach to Metropolitan Problems in Michigan

Stephen M. Silverman
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mjlr

Part of the Constitutional Law Commons, Legislation Commons, and the State and Local Government Law Commons

Recommended Citation

This Note is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
COUNTY HOME RULE:
AN APPROACH TO METROPOLITAN PROBLEMS
IN MICHIGAN

In recent years the process of urbanization has developed the traditional American city into a large metropolitan area, encompassing both incorporated municipalities and enormous areas of unincorporated territory. This process of metropolitanization has been especially strong in Michigan, where over three-fourths of the state's total population lives in metropolitan counties.\(^1\) The growth of these metropolitan areas has not occurred without problems, the most pressing of which seems to be the general lack of an effective, efficient, and responsive areawide government. Local government in urban areas has been said to be characterized by "a bewildering multiplicity of small, piecemeal, duplicative, overlapping local jurisdictions [which] cannot cope with the staggering difficulties encountered in managing modern urban affairs."\(^2\) This fragmentation of local government units is very extensive in Michigan, which is eighth among all states in total number of units of local government.\(^3\)

This note examines what seems to be the most viable solution for metropolitan problems in Michigan: county home rule, as authorized by the 1963 state constitution.\(^4\) Since the primary obstacle to the use of county home rule as a vehicle for metropolitan reform appears to lie in the present statutory authority, the Michigan County Home Rule Act of 1966 (Act),\(^5\) considerable

---

\(^1\) Committee for Economic Development, Reshaping Government in Metropolitan Areas 15 (1970). The phrase "metropolitan county" is used here in the same sense in which the term "county" is used in the U.S. Bureau of the Budget's definition of Standard Metropolitan Statistical Area (SMSA): "a central city, or contiguous twin cities, with a population of at least 50,000, together with its county and contiguous counties of a "metropolitan character."" U.S. Bureau of the Budget, Standard Metropolitan Statistical Areas 1 (1964), cited in Lineberry, Reforming Metropolitan Governance: Requiem or Reality, 58 Geo. L.J. 675, 676 n.4 (1970).


\(^4\) Mich. Const. art. 7, § 2, provides in part:
Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution . . . . Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

attention is given to the Act and to recent legislation proposed to amend the Act, Michigan House Bill 5464, introduced into the Michigan Legislature on June 21, 1971, and currently pending before the Michigan House Committee on Towns and Counties.

I. MODERN APPROACH TO LOCAL GOVERNMENT REORGANIZATION IN MICHIGAN: COUNTY HOME RULE

Historically, county administration in Michigan has been weaker than any other level of government in the state. The county has been considered to be a creature of the state, able to exercise only those powers enumerated by the state constitution and statutes. Acting as administrative arms of state government, Michigan counties have traditionally carried out such activities as elections, law enforcement, and judicial administration. However, with the recent large population growth in the metropolitan area, and with the creation of a multiplicity of local governmental units within its boundaries, the highly urbanized metropolitan county in Michigan has been increasingly called upon to provide “municipal-type” services to all or part of its jurisdiction. Going beyond what was conceived of as their original purpose, the metropolitan Michigan counties have provided their constituent local governmental units with an array of municipal-type services ranging from parks and recreation to planning. For the most part, however, although county government in Michigan has expanded the

---


7 MICH. CONST. art. 7, §§ 1-16.

8 See generally MICH. COMP. LAWS ANN. §§ 45.1 et seq. (1967), as amended, (Supp. 1972), for the legal status of counties in Michigan. See also MICH. COMP. LAWS ANN. §§ 46.1 et seq. (1967), as amended, (Supp. 1972), for the powers and duties of the Board of Supervisors, the chief administrative and legislative body of county government in Michigan. Note, however, that the Michigan constitution does provide that the provisions of this constitution and law concerning counties ... shall be liberally construed in their favor. Powers granted to counties ... by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

MICH. CONST. art. 7, § 34.

9 For example, during the decade ending in 1970, the Detroit, Flint, and Lansing metropolitan areas had grown in population by 13.2 percent, 19.2 percent, and 26.6 percent respectively. GOVERNOR'S SPECIAL COMMISSION ON LOCAL GOVERNMENT, REPORT 50 (1972) [hereinafter cited as THE COMMISSION REPORT].

10 As of 1965, the six counties in the southeastern Michigan metropolitan area had entered into a total of 709 formal and informal agreements to provide urban services to cities, townships, special districts, and authorities within their boundaries. CITIZENS' RESEARCH COUNCIL OF MICHIGAN, GOVERNMENTAL ORGANIZATION FOR METROPOLITAN SOUTHEAST MICHIGAN 65 (1965) [hereinafter cited as THE COUNCIL REPORT].
scope of its service functions, it has done so with little or no basic reorganization. Michigan counties have generally retained the same form of organization that was established for them by the 1908 state constitution. Indeed, until 1963 they had no choice in the matter. Although the Home Rule Cities Act of 1909 granted Michigan cities the right to determine their own governmental organization and procedures through the adoption of a locally framed charter, Michigan counties could not frame a home rule charter until the approval of the 1963 state constitution and the passage of the appropriate enabling legislation in 1966. Prior to 1966, then, county government in Michigan was severely limited in its legal ability to keep pace with urbanization and to meet the increased local governmental demands for municipal-type services. The county's ability to meet these demands has largely been limited to a series of intergovernmental agreements, which have generally proven to be ineffective solutions to the metropolitan area problems in Michigan. In the absence of the increased authority provided by a county home rule charter, it is likely that Michigan counties will remain constitutionally unable to provide directly areawide urban services and raise the revenues to finance them.

It appears that the advantages of the strong urban county government approach to the problem of the realignment of local government in Michigan, unlike the forms of reorganization tried in the past, far outweigh the disadvantages of such a system.

---

13 See note 4 supra for the text of the state constitutional provision authorizing counties to frame and adopt home rule charters. The convention comment for that provision states that it is intended to enable "counties, by vote of the people, to adjust their governmental structure to meet modern problems effectively." Mich. Comp. Laws Ann. Const. art. 7, § 2, Official Comment (1967).
15 Intergovernmental agreements generally take the form of either a sale of services by a city or county government to another municipality, or else a joint endeavor by two or more governmental units. Typical intergovernmental agreements involve the maintenance of a water supply or the disposal of rubbish and sewage but may also touch on such areas as mass transportation facilities or police services. See B. Frieden, Metropolitan America: Challenge to Federalism, submitted to the House Intergovernmental Relations Subcomm. of the Comm. on Government Operations, 89th Cong., 2d Sess. 87 (Comm. Print 1966); R. Jans, The Urban Fringe Problem: Solutions Under Michigan Law 38-55 (1957); J. Bollen & H. Schmandt, The Metropolis: Its People, Politics and Economic Life 162-195 (2d ed. 1970); Advisory Commission on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization 19 (1962).
16 R. Jans, supra note 15, at 52-55.
17 Advisory Commission on Intergovernmental Relations, supra note 15, at 19, identifies ten major forms of metropolitan reorganization: (1) extra-territorial municipal powers, (2) intergovernmental agreements, (3) voluntary metropolitan councils, (4) urban counties, (5) transfer of functions to state government, (6) metropolitan special districts,
Thus, although no Michigan county has as yet framed its own home rule charter, the general approach of county home rule with a strong county government is probably the most viable solution to metropolitan problems in Michigan. This, at least, is the view taken by critics, citizens groups, and public officials.

Approximately two-thirds of all metropolitan areas in the United States are located within the boundaries of a single county. For example, the Michigan metropolitan areas of Bay City, Saginaw, Flint, Lansing, Kalamazoo, Grand Rapids, and Muskegon-Muskegon Heights are each located within the confines of a single county. By means of home rule, the Michigan county can be transformed into an autonomous unit of urban government that can provide areawide services without having to make any basic changes in the geographical jurisdictions of existing units. Unlike the special district and federation methods of reform used in other metropolitan areas, the county home rule approach does not

(7) annexation and city-city consolidation, (8) city-county separation, (9) city-county consolidation, and (10) federation. These forms are also discussed in B. FRIEDEN, supra note 15, at 86–106.

18 The most recent attempt at the adoption of a county home rule charter failed when Delta County voters rejected the charter proposed to them on Feb. 28, 1972. Delta County had been the only county to approve the formation of a charter commission authorized to frame a home rule charter and submit it for voter approval. Escanaba Daily News, Feb. 29, 1972, at 2, cols. 1–2.

19 See generally GREATER GRAND RAPIDS CHAMBER OF COMMERCE, MODERNIZATION OF LOCAL GOVERNMENT THROUGH COUNTY HOME RULE IN MICHIGAN: A SYMPOSIUM ON UNIFICATION OF MUNICIPAL SERVICES ADMINISTERED AT THE COUNTY LEVEL (1970).

20 THE COMMISSION REPORT, supra note 9, at 18.

21 In 1969 ANN. FINANCIAL REP.: MICHIGAN COUNTY GOVERNMENT at 1, State Treasurer Allison Green noted:

We feel strongly that... the county should be able to handle all those functions that it desires, as provided in the charter, with the cities doing what remains. This would fulfill the true purpose of strong county government. It would retain the identity of the city, but give the power to deal with regional problems to the county where the problems can be solved.

22 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, supra note 15, at 44.

23 These areas were deemed Standard Metropolitan Statistical Areas, as defined by the 1960 U.S. CENSUS OF POPULATION, cited in THE COUNCIL REPORT, supra note 10, at 30. See also the definition of SMSA, supra note 1.

24 See generally J. BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES (1957). See also ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, supra note 15, at 49–58.

25 The government of metropolitan Toronto, Canada, is the primary example of the federation approach to the solution of urban areawide problems. The City of Toronto and its twelve suburbs were brought together as a federated government by the Ontario provincial legislature's enactment of the Municipality of Metropolitan Toronto Act, ONT. REV. STAT. ch. 260 (1960). For the details of how the first federated metropolitan government in North America came about and how it functions, see generally H. KAPLAN, URBAN POLITICAL SYSTEMS (1967); T. PLUNKETT, URBAN CANADA AND ITS GOVERNMENT 76–118 (1968); P. SMALLWOOD, METRO TORONTO: A DECADE LATER (1963); Milner, The Metropolitan Toronto Plan, 105 U. PA. L. REV. 570 (1957).
require the creation of still another unit of government in an already fragmented system. By retaining the number of governmental units in existence, better control over areawide problems and a better relationship between taxes and benefits can be provided at the same time that local responsibility for nonareawide services is preserved.26

Although the county home rule approach to treating problems of an areawide nature is of more limited value in the one-third of the American metropolitan areas which cover more than one county,27 the concept is still functional in those various intercounty metropolises where the majority of the residents and the most serious problems are found in one central county. For example, the southeastern Michigan metropolitan area is considered to include the counties of Wayne, Oakland, Macomb, Monroe, St. Clair, and Washtenaw.28 Of the six, however, Wayne County has about 65 percent of the total population of the area,29 and its constituent units receive far more urban-type services through intergovernmental agreements than do any of the other counties in the area.30 Thus, it would appear that if Wayne County adopted a home rule charter it would be better able to deal with the bulk of the area's problems. In addition, even if metropolitan problems are viewed on a strictly regional basis, effective intergovernmental cooperation is far more feasible among a few counties than among the innumerable municipalities, school districts, special districts, and authorities which overlap in large metropolitan areas.31

The second major advantage of the strong county government approach to metropolitan area problems is that home rule would give the county administration authority commensurate with its responsibility to provide municipal-type services to its smaller constituent cities and villages. This relationship is especially clear in the southeastern Michigan metropolitan area where the six counties are the major "exporters" of urban services, providing through intergovernmental agreements many more services than they receive.32 If the constituent governmental units are going to

26 See text accompanying notes 46-59 infra.
27 Advisory Commission on Intergovernmental Relations, supra note 15, at 44.
29 Id. at 19.
30 Id. at 65.
31 The current problems faced by the Southeastern Michigan Council of Government (SEMCOG), a group composed of elected officials from the cities, villages, and special districts of the Detroit metropolitan area, as compared with the relatively high degree of cooperation among the units of a predecessor organization that represented only the various county governments in the area, supports this conclusion. See J. Banovetz, Perspectives on the Future of Government for Metropolitan Areas 26 (1968).
be permitted to call upon the county to provide areawide services, then a county government should be established which is able to provide those services as economically and efficiently as possible. Similarly, if the voters in the cities and villages which receive the services are able to determine their own governmental structure through home rule, it seems reasonable that they should also be allowed to decide what type of home rule authority is needed to enable the county to fulfill its responsibility to provide those services. Thus, the Michigan Legislature's passage of the County Home Rule Act of 1966 was an important step toward establishing parity between the authority and responsibilities of county governments.

The strong county approach is also advantageous in that many urban problems can be solved most efficiently and economically only on a countywide basis. For example, in metropolitan Miami, Florida, the Dade County government has been allowed by the Florida constitution and empowered by its own home rule charter to provide directly urban services which transcend the boundaries of the constituent local government units. No intergovernmental agreements are required, and the county need not request the consent of its constituent cities and villages in order to provide such services. The only limitation on the county's power is that the services be of a metropolitan nature. Pursuant to these authorizations, the Metropolitan Dade County government has provided the entire county with an array of urban services ranging from the establishment of uniform, countywide traffic laws to the purchase of four bus lines as the nucleus for an areawide transportation system. The county's coordination of these metropolitan services has been so effective that the constituent cities have increasingly transferred many of what had been thought to be purely local functions to the county. By 1967, the City of Miami alone had requested that the county assume $1,000,000 worth of city services.

33 The Dade County Board of Commissioners has the power "to do everything necessary to carry on a central metropolitan government in Dade County." FLA. CONST. art. 8, § 6(a), incorporating by reference FLA. CONST. art. VIII, § 11 (1885).
34 Metropolitan Dade County Gov't Charter §1.01A (1957).
36 See Miami Shores Village v. Cowart, 108 So. 2d 468, 471 (Fla. 1958), in which the court interpreted the broad grant of constitutional authority to the County Board of Commissioners to mean that the Board may regulate on a countywide basis only "those municipal services or functions that are susceptible to, and could be most effectively carried on under, a regulatory plan applicable to the entire metropolitan area . . . ."
37 J. Bollens & H. Schmandt, supra note 15, at 332-33.
38 Hall, Metropolitan Dade County, in Nat'l Ass'n of Counties, Guide to County Organization and Management 18, 20 (1968).
39 Id.
If Michigan counties were legally empowered to adopt and frame a strong county home rule charter, they could act as effectively as did Dade County to help solve the general metropolitan problem characterized as "lack of coordination." If Kent County, Michigan, had had strong county home rule, significant taxpayer savings in construction and maintenance costs could have been effected by the direct construction of a single major pipeline to Lake Michigan in order to supply the entire Grand Rapids metropolitan area with water. Thus, the existing multiple pipelines created by the city and suburbs could have been avoided, and the entire metropolitan area would have benefited.

The strong home rule county approach to metropolitan problems can be not only highly efficient but also very economical in that the urban county can take advantage of the economies of larger scale administration. Los Angeles County, California, unlike Dade County, Florida, does not have the legal authority to impose municipal-type services which transcend the boundaries of its constituent cities and villages. Instead, it has adopted the "Lakewood" or "Contract Services Plan" under which the county contracts with its local governmental units to provide them with a whole "package" of urban services. By taking advantage of the economies of larger scale administration, Los Angeles County has been able to provide these services at rates which have induced the majority of all newly incorporated municipalities in the area to subscribe to the services offered under this plan.

It is doubtful, however, that any metropolitan county in Michigan, even with the aid of strong county home rule powers, could economically provide its constituent local governmental units with an entire package of urban services until the county had time to develop urban service facilities similar to those presently existing...
in Los Angeles County. Nevertheless, it appears that Michigan counties with sufficient home rule powers could take advantage of economies of scale by consolidating such services as police protection and refuse disposal which require relatively small physical plants and are currently being provided by both the county government and its municipalities. For example, Kent County provides police service to the unincorporated areas of that county, while the City of Grand Rapids maintains a separate police force for those areas of the county that fall within the corporate limits of the city. If the separate police departments were unified into one large organization under the management of the home rule county, greater economy for the taxpayers of the entire county would undoubtedly result.

There is yet another problem facing many metropolitan areas in the United States for which strong county government is a possible solution. As a result of liberal state laws allowing the incorporation of cities and villages, there has been a substantial increase in the number of incorporated municipalities over the past twenty years or so, resulting in extreme variations in tax bases and service levels. Thus, some citizens pay extremely high municipal taxes to receive only a minimal level of services while others pay low municipal taxes and receive a high level of services. It is submitted that if Michigan county governments were granted strong home rule powers, enabling them to provide truly areawide services, their broader tax bases and uniform levels of services could moderate these situations of fiscal and service inequities.

Aside from the basic limiting factor that some metropolitan areas extend over more than one county, however, the urban county approach to metropolitan problems has been most criticized on the ground that as a class of governmental units, counties probably have been the most backward with respect to modern organization and administration, due to the diffusion of policy-making and ad-

---

44 It should be noted that Los Angeles County has had a long history of providing large-scale urban services, first to its unincorporated areas and then, under the Lakewood Plan, to its incorporated villages and municipalities. Kuyper, supra note 43.

45 Greater Grand Rapids Chamber of Commerce, supra note 41, at 17.


47 See, e.g., Mich. Comp. Laws Ann. § 117.6 (1967), which sets out the procedures for the incorporation of a home rule city.


49 For example, in a 1955 survey of middle-sized New Jersey municipalities, one community spent only 7 percent of its total nonschool budget on the “optional” or “luxury” services of recreation and adult education, while a neighboring community, with a tax rate one-half as high, allocated twice as large a portion of its budget to those same services. R. Wood, supra note 46, at 59–60.
administrative authority among a number of independently elected officials.  

This statement correctly characterizes the county governmental structure and organization in Michigan. The great number of elected officials, boards, and commissions tends to discourage cooperation among these groups if there is no one instrumentality with the power to coordinate their work. Present county functions and services tend to be carried out according to the standards of the individual official without regard for the authority or expertise of other officials. In order to deal with this type of deficiency, Michigan's present county home rule statute and recently proposed amendments thereto are aimed at the modernization of county government. Not only do they provide for sizable grants of substantive powers to home rule counties, but they also provide for a complete revamping of county governmental structure and organization.

II. THE IMPLEMENTATION OF COUNTY HOME RULE IN MICHIGAN: PROPOSALS FOR REFORM

Compared with those measures already used as substitutes for the reorganization of local government, it would appear that county home rule holds the greatest potential as a solution to metropolitan problems in Michigan. However, since the passage of the 1966 county home rule statute which established procedures and policies relating to the framing and adoption of county charters, only Delta County, in the Upper Peninsula, has approached the enactment of a charter form of government. The explanation for the present lack of implementation of the county home rule concept is complex. Undoubtedly, political factors, such as voter apathy and socio-economic differences between

50 Advisory Commission on Intergovernmental Relations, supra note 15, at 45.
53 Bebout, supra note 52, at xv-xvi.
56 See note 17 supra.
57 Delta County voters took the important first step under the 1966 Act by electing a county charter commission. However, the Delta County electorate recently rejected the charter proposed to it by the commission. See note 18 supra.
58 See Lineberry, supra note 1, at 690-97, for a discussion of the general political and socio-economic factors which hinder the implementation of any proposal for metropolitan reform.
suburban and central city areas, have hindered the implementation of county home rule in Michigan. The remainder of this note, however, attempts to analyze the legal rather than the political factors responsible for the current inertia in the county home rule movement. Since the language of the relevant state constitutional provision is extremely permissive in authorizing virtually any form of charter county government, this analysis concentrates on those provisions of the 1966 Act which have most hindered the implementation of the concept of county home rule as a solution to areawide problems and on recent legislative proposals suggested as alternatives to the present statutory framework.

The major piece of legislation proposed as an alternative to the 1966 Act is Michigan House Bill 5464, introduced into the Michigan House of Representatives on June 21, 1971. The bill, which would repeal the present county home rule statute, is currently before the Committee of Towns and Counties of the Michigan House. The general purpose of House Bill 5464 is to "provide a means of enabling counties whose residents so desire to draft a home-rule charter tailored to meet their needs and wishes within a standard skeleton framework." The bill emphasizes strong county government and grants the people of each county the widest possible latitude in choosing the form and structure of their government through the adoption of a county charter.

A. The Restructuring of County Government Through Home Rule

One of the major arguments for county home rule is that the present structure of Michigan county government, as provided for in the constitution and statutes, is inadequate and unsatisfactory for a unit of local government faced with the problems of providing urban services in a metropolitan area. In particular, present county government in Michigan lacks a central authority respon-
sible for supervising the administration of county affairs. This lack of a chief county executive officer has been severely criticized by the recent report of the Governor's Special Commission on Local Government:

It is recommended that county government be structured to require the establishment of an executive officer with full responsibility over all the agencies of county government regardless of the source of funding. The executive officer shall have the traditional executive powers.\(^6^6\)

The 1966 Act does require that a home rule charter provide for a salaried executive who is to be elected at large on a partisan basis.\(^6^7\) Although the county charter would provide for the authority, duties, and responsibilities of the executive, it is not at all clear from the wording of the present statute whether the charter could provide for a full-time appointed county manager to be responsible for the administration of county affairs, leaving the elected executive with only ceremonial functions.\(^6^8\) If such an executive were permitted, county government could form along the lines of the council-manager form of municipal government.

There are several distinct advantages deriving from an appointed county manager who acts as chief administrative officer. In seeking an appointed chief executive, the county may look for a trained professional having a high degree of technical and administrative competence. This would free the executive officer from the nuisance of political campaigning.\(^6^9\) The council-manager form of county government would also remove most administrative decisions from the political forum.\(^7^0\) An elected chief executive, on the other hand, does have the advantage of providing policy leadership and can be held politically responsible for his actions. In any event, basic home rule principles dictate that the people of

\(^{6^6}\) The Commission Report, supra note 9, at 16.


\(^{6^8}\) Professor Bromage has criticized this provision of the present statute:

The problem in Michigan is complicated by the nature of the county home-rule act of 1966. It does not provide for a true county executive. Home-rule counties may have a partisan, elected county mayor, but he is more of a coordinator than an active, integrated executive.

Bromage, Reflections on County Home Rule, 64 Mich. Mun. Rev. 11, 16 (1971). See also Grubba, supra note 6, at 56.

\(^{6^9}\) As is typical of governmental reorganization, the emphasis is on simplicity. Traditionally counties have not had a politically strong executive officer, and the appointment of a county manager achieves the requisite administrative centralization without introducing additional political complexity into the system. Bebout, supra note 52, at xxviii.

\(^{7^0}\) A more refined system removes the appointive powers of the administrator, traditionally a source of political patronage, and thereby attempts to insure that he will function free of many political influences. This is the chief administrative officer plan used in Los Angeles County and a number of other California counties. Id. at xix. See Cal. Gov't Code § 25208 (West 1968).
a local governmental unit should be clearly allowed the choice of having an elected or appointed executive.\textsuperscript{71}

Recognizing that one of the main weaknesses of current county governmental structure is its failure to provide for a centralized executive authority, House Bill 5464 requires the charter of a home rule county to provide for a chief executive officer.\textsuperscript{72} Unlike the 1966 Act, however, House Bill 5464 gives the people of the county the option of providing either an elected or appointed executive.\textsuperscript{73} Thus, the voters of each charter county could weigh the technical administrative competence of an appointed county manager against the policy leadership provided by an elected chief executive and decide which form was more suitable for the circumstances existing in the county.

The present structure of Michigan county government further inhibits a unified approach to providing urban services in a metropolitan area in that both the constitution and the present statutes require municipal-type functions and services to be administered by a prescribed array of elected or appointed officers, boards, and commissions, in addition to the county's general legislative body, the Board of Commissioners.\textsuperscript{74} The Governor's Special Commission on Local Government criticized this situation in its recent report:

\begin{quote}
Constitutional and statutory provisions presently contribute to the diffusion of the executive function. The relationship of such offices, boards and commissions to both the executive and legislative bodies of the government needs modification if county governments are to function as single integrated governing systems . . . . [The statutorily created proliferation of boards and commissions has] resulted in (a) a diffusion of executive authority; (b) a dissipation of legislative effectiveness; and (c) confusion to the citizen relative to the determination of accountability and the redress of grievances.\textsuperscript{75}
\end{quote}

Indeed, if a centralized executive authority is essential to a home rule county's ability to function in a more efficient, economical, and responsible manner, then it appears that unified executive direction and control of county operations would be virtually impossible if the status of all these elected officials, boards, and commissions were to remain unchanged.\textsuperscript{76} Modernization of the

\textsuperscript{71} Bromage, supra note 68, at 16; Note, supra note 52, at 566.

\textsuperscript{72} Mich. H. B. 5464 § 11(g) (1971).

\textsuperscript{73} Id.

\textsuperscript{74} MICH. CONST. art. 7; § 2; MICH. COMP. LAWS ANN. § 45.514(g) (1967).

\textsuperscript{75} THE COMMISSION REPORT, supra note 9, at 17.

\textsuperscript{76} See COMMITTEE FOR ECONOMIC DEVELOPMENT, supra note 2, at 50.
county executive is contingent upon the modernization of the administrative apparatus of county government. Change in one area is inseparable from change in the other.

The 1966 Act does not grant broad structural powers to the home rule county. One provision of the statute requires that the county charter provide for the partisan election of the constitutional offices of sheriff, prosecuting attorney, county clerk, treasurer, and a board of county commissioners, while another provision permits the continuance of all existing county offices, boards, commissions, and departments. The administration of the executive function would continue to be diffused under such an inflexible guideline. Any attempted reorganization of the structure of the home rule county would be hindered by the statutory exemption of these offices from an overall plan for county modernization; and the home rule county, even if initially granted broad substantive powers, would be unable to administer efficiently any large-scale municipal-type operations.

This rigid administrative hierarchy created by the 1966 Act is open to further attack in that it violates one of the basic principles of the home rule concept—local freedom of choice. Since it is the people of the county who are to be subject to the form of government they select, home rule principles dictate that the people should be able to determine completely for themselves the administrative structure of their county government, including which offices are to be established and whether the officeholders are to be elected or appointed.

In the area of the reorganization of the elective offices and administrative structure of the county, House Bill 5464 provides significant flexibility, thereby allowing greater voter self-determination than does the current county home rule statute. The bill requires that the charter of each home rule county provide “for the appointment or election at partisan or non-partisan elections and for the duties of . . . a sheriff, a treasurer, a clerk, a register of deeds and a prosecuting attorney . . . .” Where the 1966 Act requires that the chief administrative officials be elect-

---

77 MICH. COMP. LAWS ANN. §§ 45.514(b), (c) (1967).
78 Id. § 45.514(d).
79 THE COMMISSION REPORT, supra note 9, at 16, calls the existing structure a “labyrinth of political and administrative power” in which political accountability and administrative responsibility are “virtually impossible to determine.” An organization so susceptible to top-heaviness and executive anonymity can hardly be expected to function on an efficient level.
80 Note, supra note 52, at 566.
81 Bebout, supra note 52, at xx, xxxiv.
ed, the proposed legislation would clearly give the people of the home rule county the option of providing for either the election or appointment by the chief executive of these officials. In addition, under House Bill 5464 the county charter would not have to provide for the continuance of the numerous county offices, boards, commissions, and departments presently required by the 1966 Act. Any subordinate administrative bodies are required by the bill to be staffed by appointment "as may be necessary." Thus, the structure of the home rule county is simplified with responsibilities coming to rest initially in a few key executive departments.

Although the proposed legislation goes far in proposing the reorganization of the administrative structure of the home rule county, it should be noted that this reform measure stops short in one important area. Subsection 11(g) of House Bill 5464 requires the home rule county to retain five "constitutional officers." There is no clear reason why these officers should be retained when the bill otherwise discards almost the total spectrum of currently existing administrative offices. The county charter provision of the Michigan constitution does not require the retention of these offices, as it states that the county home rule enabling legislation may "permit the organization of county government in form different from that set forth in this constitution . . . ."

It is important to the concept of home rule not only that the people be free to elect or appoint their administrative officers but that they also be free to determine which administrative officers are needed. A complete reorganization of the administrative structure of the county does not seem possible if the offices of sheriff, prosecuting attorney, county clerk, treasurer, and register of deeds are exempted. The "Citizens Committee of 99" of Wayne County faced this same problem in proposing amendments to the 1966 Act. It proposed that Subsections 14(c) and 14(d) of the 1966 Act, dealing with the administrative structure of the county, be replaced by a provision which would allow the people to vote

[f]or the continuation of all existing county offices, boards, commissions and departments whether established by constitution, statute, or by action of the board of supervisors, or for the discontinuance thereof and the performance of their

---

85 See text accompanying note 82 supra.
87 Note. supra note 52. at 566: Bebout. supra note 52. at xi.
respective duties by other county offices, boards, commissions and departments . . . \(^{88}\)

In considering House Bill 5464 and possible amendments to the bill, the House Committee on Towns and Counties should consider this alternative proposal of the Wayne County Citizens Committee as being possibly more consistent with home rule concepts than the relevant portions of the proposed legislation before it.

**B. Granting Substantive Powers to Home Rule Counties**

County government is presently limited to providing those services and functions authorized by state law.\(^{89}\) These are primarily "state" functions and services which the county has administered in its traditional role as an arm of the state government. When called upon to perform certain municipal-type services, counties encompassing the metropolitan areas of Michigan have had the power to do so only when a state law specifically authorized each service.\(^{90}\) If the home rule county is to meet the demand for urban services more efficiently, economically, and responsibly, the charter county enabling legislation must delegate to the home rule county broad substantive powers.\(^{91}\) A broad grant of such powers would give the people of the county home rule over what the county does in the same sense that a broad grant of structural powers would give the people home rule over how to organize the county to carry out its functions. A home rule county with even the most modern administrative structure would have little ability to solve metropolitan problems unless it were also equipped with the broad legal authority to carry out needed services on an areawide basis.\(^{92}\)

The 1966 Act grants any Michigan county adopting a home rule charter only limited substantive powers.\(^{93}\) Although the statute authorizes the county charter to provide for the performance of a broad spectrum of municipal-type services and functions at the county level, this liberal grant of substantive power is qualified by the following provision:

Powers granted solely by charter may not be exercised by the


\(^{90}\) Mich. Const. art. 7, §§ 1-16.

\(^{91}\) Committee for Economic Development, Guiding Metropolitan Growth 43 (1960).

\(^{92}\) Id.

charter county in a local unit of government which is exercising a like power without the consent of the local legislative body.\textsuperscript{94}

This "consent theory"\textsuperscript{95} is a step backward from the metropolitan approach and is open to attack on several grounds. Under the wording of the present statute, each separate local governmental unit could veto by resolution the county's undertaking of some particular charter function or service which is also provided by the local unit. One or two of the larger municipalities could thereby obstruct the implementation of a countywide urban services program which was urgently needed by the smaller units but which the county could provide economically and efficiently only if the objecting units were included in the plan. Any county programs proposed in the interests of efficiency and economy would be placed at the mercy of petty, municipal rivalries.\textsuperscript{96} As long as the consent limitation of the 1966 Act exists, any municipal-type services, such as police protection, zoning, or mass transportation, would face the threat of having to be provided in a random pattern, administered in the unincorporated areas of the county and in consenting municipalities but forbidden in those cities where consent was not given.\textsuperscript{97} Efficiency of administration and economies of scale would rarely accrue to the benefit of home rule counties in such situations.

Another related problem arises in that the 1966 Act is silent as to the nature of the consent which is to be given and the binding effect, if any, which the granting of consent has on the participating municipality.\textsuperscript{98} Presumably, the consenting municipality could limit its consent to a period of time or pass another resolution at any convenient time withdrawing the county's authority to provide a particular service within its corporate limits. As long as the relevant statutory authority fails to address itself to the binding effect of consent once granted, metropolitan planning and the areawide provision of services may be unattainable even if all local units initially give their consent.

Outside of direct repeal of the 1966 Act, as is proposed by House Bill 5464,\textsuperscript{99} it is suggested that the consent clause's limiting effects on the implementation of strong county home rule can

\textsuperscript{94} Id. § 45.515(c).
\textsuperscript{95} The term is that of Professor Bromage. See Bromage, supra note 68, at 16.
\textsuperscript{96} Note the potential present in such a situation for political bargaining between the various units. Note, supra note 52, at 559. See also B. FRIEDEN, supra note 15, at 88; R. JANS, supra note 15, at 53.
\textsuperscript{97} B. FRIEDEN, supra note 15, at 88.
\textsuperscript{98} See text accompanying note 94 supra.
be avoided by the enactment of either or both of two amendments to the present statute. One amendment would retain the concept of local governmental consent as a check on the exercise of the charter county's powers, but an individual unit's failure to give its consent would be ineffectual unless a specified number or percentage of all the local units involved vetoed the county's undertaking of the particular charter function or service at issue.\(^\text{100}\)

Under the second suggested amendment, the home rule county could overcome the lack of consent, even if a specified percentage of the local units vetoed the plan, by submitting the question to the voters in a countywide referendum.\(^\text{101}\)

Michigan House Bill 5464 supports the metropolitan approach to the solution of urban area problems by advocating a grant to the home rule county of considerable substantive power to conduct areawide public service programs. The bill would require the charter of each home rule county to provide for "the conduct by the county of such public services, works or improvements which may best be performed on a countywide basis . . .,"\(^\text{102}\) eliminating, in theory, the limitations posed by the consent doctrine of the present statute. Through the proposed legislation's combined grant of extensive home rule structural powers and strong home rule substantive powers, charter counties in Michigan would be able to take full advantage of economies of large-scale operation and would be able to provide public services with greater efficiency than could be provided under the current system involving a multiplicity of local units.\(^\text{103}\) An integrated, coordinated approach to the most severe metropolitan problems could finally be maintained.\(^\text{104}\) In addition, once the home rule county has decided upon a plan directed toward solving an areawide problem, the county government, under House Bill 5464, need not provide those urban services directly, but may force its constituent units to help it administer such a countywide plan. The proposed legislation provides that

\[\text{the county shall have the power to set and enforce minimum standards for the conduct of any such powers and functions as are conducted by the several cities, townships, charter townships and villages of the county . . . in accordance with an overall plan for the function or service.}\]  

\(^{100}\) The Council Report, supra note 10, at 44.

\(^{101}\) Id.


\(^{103}\) See generally Hirsch, Local Versus Areawide Urban Government Services, 17 Nat'l Tax J. 331 (1964).

\(^{104}\) See, e.g., Lineberry, supra note 1, at 683.

By taking advantage of existing local governmental facilities, the home rule county would thus be spared the high cost of building new facilities and would be able to assure that such services were provided by the local units in a uniform manner.

The major disadvantage of the bill's grant of substantive powers to home rule counties is that it does nothing to alleviate the conflicts and problems inherent in the presence of "overlapping powers." The county is a unit of government which contains cities, villages, and townships which have the power to perform purely local functions and services. All of these local units have statutory authority in certain areas, and home rule cities and villages have broad substantive powers with respect to "municipal" concerns. The bill's grant to the counties of the power to provide public services which can "best be performed on a countywide basis," on top of existing substantive home rule powers for cities and villages respecting their municipal concerns, lays the basis for a major problem in differentiating between "county" and "municipal" concerns.

There are certain restrictions, however, which can be imposed upon the home rule county's substantive powers so as to minimize any potential conflicts with municipal home rule powers. The primary restriction on such powers is found in the Michigan constitution itself which provides that it is the people of the county who must frame and adopt the home rule charter. Even though House Bill 5464 or any other proposed piece of enabling legislation might provide for a broad grant of home rule powers, a county could not actually exercise those powers unless its charter authorized it to do so. Since the people of the county must approve the charter, a home rule county in Michigan could have only those powers which the voters of the county authorized it to have. If the voters felt that a charter framed in accord with the bill's broad grant of substantive home rule powers threatened a serious encroachment upon municipal powers, they could reject the entire charter as proposed. Or, in order to avail themselves of the basic legal framework and advantages of county home rule, the voters could adopt the charter and later amend it so as to enumerate specifically those public services which can "best be performed on a countywide basis." A third moderating factor lies, of course, in the ability of the people to refuse to reelect those

106 Mich. Const. art. 7, § 22 provides *inter alia* that cities and villages "shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government . . . ."

107 *Id.*


officials who act overzealously in the performance of their duties and thereby create jurisdictional conflicts. Thus, it seems that the likelihood that legislation like House Bill 5464 will create the problems and conflicts of overlapping powers is more imaginary than real.

III. Conclusion

County home rule seems to be the most promising means of providing effective areawide government for the nation's metropolitan areas. It appears to have advantages that far outweigh its disadvantages, as compared to previously attempted forms of local governmental reorganization. Yet no Michigan county has adopted a home rule charter. The explanation for this phenomenon seems to lie more in the limitations imposed by the 1966 county home rule enabling act than in any weaknesses of the general home rule concept. The current statute does not provide for all of the flexibility and freedom that the Michigan constitution permits and that an urban county government requires. Every county that begins to look at home rule as a device for providing the county with broader governmental powers and as a solution to metropolitan problems is immediately faced with the restrictions on local choice and the emphasis on municipal powers explicit in the 1966 Act. House Bill 5464 provides a partial answer to these problems by emphasizing both the ability of voters in a particular county to choose an appropriate structure of government and the prevalence of county powers over municipal powers. Although lacking definition in such critical areas as the prerequisite of local consent, legislation like House Bill 5464 seems to provide the key for the urgently needed strong county administration in Michigan. If the bill is enacted, the resultant home rule counties in Michigan will be better able to structure themselves so as to administer effectively a broad range of substantive powers and to deal effectively with the new era of metropolitan problems.

—Stephen M. Silverman