

**THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH**

**for the**

**NEW JERSEY CONSTITUTIONAL CONVENTION**

**HOME RULE**

**by**

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HOME RULE

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## HOME RULE

"Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation . . . the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations of the state, and the corporations could not prevent it."<sup>1</sup>

This statement from a 75-year-old court decision describes the status of local government in New Jersey today. Although this doctrine has been contested, the United States Supreme Court has made it clear in a New Jersey case that there is no inherent right of local self-government in the United States.

"Municipal Corporations have, in the absence of Constitutional provisions safeguarding it to them, no inherent Right of Self Government which is beyond the legislative control of the State."

"The State, 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 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 provisions of the Constitution of the United States."<sup>2</sup>

In many states the people have not been satisfied to leave local government in this inferior category. They have included in their constitutions "home rule" sections which granted varying degrees of power to localities

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1. City of Clinton v. Cedar Rapids and Missouri Railroad Co., 24 Iowa 455 (1868)

2. Trenton v. New Jersey, 262 U.S. 182 (1923)

and made them free from legislative interference to a more or less limited degree.

The home rule movement has spread slowly from the first constitutional provision in Missouri in 1876 until today 20<sup>3</sup> states possess constitutional provisions authorizing home rule. It is not, therefore, an untried theory. It has worked with more or less success for many years and so far there has been no move to abandon it where it exists.

The home rule movement in New Jersey resulted in an amendment to the Constitution in 1875 prohibiting special legislation concerning municipalities, the optional forms of local government, and the Home Rule Act of 1917.

#### What is Home Rule?

What is "Home Rule"? It does not and never has meant complete local self-government. It is always limited self-government. It means freedom from dependence upon the state and freedom from state interference in limited fields only.

Broadly speaking, "Home Rule" refers to any power of government which may be conferred upon a city whether by statute or constitution. The more usual definition is limited to the powers that are conferred upon municipalities by constitutional provisions--especially the power of municipalities to frame and adopt their own charters.

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3. Eighteen state constitutions grant localities the right of adopting charters of their own choosing. They are: Arizona, California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wisconsin.

Two states--Georgia and Idaho--have much more limited provisions.

### The Development of Home Rule

One hundred years ago legislation directed at a single municipality was the rule in nearly every state. Often such legislation served a useful purpose, for it could fit local governments to local needs.

The practice, however, led to numerous abuses. Since the laws were of little concern to most of the legislature, they were easy to pass. Often they were passed before the citizens of the affected community knew of their existence. Pressure groups found the device particularly useful.

Local legislation burdens the state government with local matters of no real concern to it. It leaves insufficient time for considering problems of state-wide importance, and accentuates the feeling of localism in the legislature. By encouraging the trading of votes, it prevents fair consideration of both special and general legislation. The system brings uncertainty and confusion to localities, injects state-wide politics into local affairs, and makes self-government difficult.

### Prohibitions Against Local Legislation

These abuses led to the adoption of constitutional prohibitions against special legislation concerning municipalities. Such prohibitions are found in the constitutions of 42 states today. The history of nearly every one of these states indicates that the provisions were by no means completely successful. It is apparent that the prohibition left a vacuum. Whatever the faults of special legislation, it filled a real need in constructing governments to meet the requirements of particular municipalities.

State legislatures have shown great inventiveness in circumventing the prohibition against local legislation. The most popular device is by classification of municipalities. If classification is "reasonable," the

courts ordinarily sustain it. In some states certain general classification laws place only one city in a class. And in most states, laws which are adopted in general form are often intended for only one city.

### Classification Charters

Since special charters could no longer be passed by legislatures, a few states attempted to draft uniform charter laws. These failed because of excessive rigidity. It soon became evident that diverse local conditions could not be covered in a single charter. No state today has a completely uniform charter system.

The classification charter was developed as a compromise between special charters and the uniform charter. It acknowledges that cities of different sizes require different forms of government. At the same time, by making charters uniform for a class it tends to stop special legislation.

It is not an entirely satisfactory solution to either problem. The needs of the municipality are the result of geographic and industrial conditions as well as population; and in respect to population, density is often more important than mere numbers. Classification has not been able to take these factors into account.

### Optional Charters

Optional forms of government which may be adopted by the voters of any municipality provide a somewhat better plan. In some states, powers of local government are also optional.

The optional charter and power system can provide a substantial amount of home rule without any constitutional provisions. It provides considerable flexibility both as to form and powers.

### Home Rule Charters

The home rule method of municipal charter drafting is now provided in the constitutions of 18 states. Within various limits, home rule cities establish their own governments and define the scope of their local affairs.

The home rule provisions vary considerably from state to state. In 5 of the states the system operates with very little success. In Pennsylvania, the constitutional provision has never been implemented by legislation. In Utah, no cities have made use of the home rule amendments. In West Virginia, only 1 city has a home rule charter. In Maryland, home rule extends only to 1 city. In Missouri, under the old constitution, only 2 cities were granted home rule. (The new constitution, however, extends the provision to all cities of more than 10,000.)

In the other states, home rule operates more satisfactorily.

### What are Municipal Affairs?

In nearly every home rule state the problem of deciding what matters were primarily local has been a troublesome one for the courts. The terms used in the constitutions, such as "municipal affairs," "all local and municipal affairs," "local affairs in government," "local concerns," and "property, affairs or government" are general and vague. They have no well-understood technical meaning and though the home rule movement is 70 years old, no definition of what may properly be called "municipal affairs" has been evolved.

The courts generally have placed a narrow construction on "local affairs." Even where constitutional provisions seem most inclusive, the courts have narrowed the field of local affairs considerably. There is some indication that home rule cities generally possess a greater range of powers than cities without home rule. A study<sup>4</sup> made in 1938 indicated that, of 27 powers studied,

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4. The Municipal Year Book, 1938 pp. 149-165.

cities in 10 of the 13 home rule states analyzed had at least 21 of the powers. Cities in only 3 of the other 31 states studied possessed that many powers. It is interesting to note, however, that New Jersey was one of the 3 states.

There is some evidence that the existence of home rule constitutional provisions tends to promote a liberal legislative attitude with respect to general laws; and general laws, even in home rule states, can be an important source of municipal freedom.

Also, in states such as Wisconsin, where little use has been made of the home rule charter-making powers, the cities very often make use of the home rule charter amending powers, and that is perhaps the most important feature of home rule--the advantage of flexibility in meeting the day to day problems of municipalities.

#### HOME RULE IN NEW JERSEY

The first important step towards home rule in New Jersey came in 1875 when a constitutional prohibition against local legislation was adopted.<sup>5</sup>

Governor Joel Parker, in support of the amendment, pointed to the evils of hasty and ill-considered legislation. He also said that the amendment "would dispense with at least nine-tenths of the business brought before the legislature under the present system. The general public laws passed at the last session are contained in about 100 pages of the printed volume, while the special and private laws occupy over 1250 pages."

The abuses prior to the adoption of the amendment were outlined in a decision by Chief Justice Beasley:

"The evils which had been inflicted under the guise of laws operative only within certain areas were of the most

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5. Constitution, Art. IV, Sec. 7, Paragraphs 9, 11.

serious character; . . . they constituted one of the principal causes that led to the . . . amending of the constitution of the state. Experience had conclusively shown that the system itself was vicious, that permitted a city, or other political district, to be governed by laws applicable to it alone, such laws being enacted by persons having no particular interest in such locality, and having no constituency living within its bounds, to whom they were accountable for the measures to which they gave their sanction. This, in truth, was but one remove from the oppression of being governed by strangers. The result was such as might have been anticipated: laws were to be had for the asking by scheming persons, that were subversive of the rights of property, which tended to the most reckless expenditure of the public moneys, so that the debts of some of these public bodies accumulated to such a degree as to threaten them with insolvency. Besides these grievances there were others of a lesser magnitude," which were also the "sources of much vexation and inconvenience. Among these minor mischiefs was the practice of amending and supplementing municipal charters with a profusion that knew no bounds."<sup>6</sup>

As in other states, the prohibition was not an immediate success.

As the Home Rule Commission in 1917 reported:

"Much ingenuity has been displayed in attempts to evade the plain mandate of the constitution, that no special law shall be passed regulating the internal affairs of municipalities."

The Stokes Commission on Municipal Government in 1908 had this to say: ". . . the laws have become so intricate as to confuse even the legal profession, . . . The system of law-making under which this system has grown up is wholly wrong in principle and mischievous in practice . . ."

The Commission also pointed to a remedy:

"Your Commission, however, believes that there is a remedy for these evils, and that a long step in that direction can be made by the adoption of a municipal code, which on the one hand shall clearly limit the sphere of state activity and obviate the need of state interference in local affairs, and, on the other hand, shall clearly

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6. Van Riper v. Parsons, 40 N.J.L.1 (1878)

mark the sphere of local government and provide that within that sphere the citizens shall be allowed to manage their own affairs in their own way."<sup>7</sup>

### The Home Rule Commission

The 1875 amendment had directed that the legislature pass general laws concerning local government, but it was not until 1916 that a Commission to revise and codify the statutes relating to municipalities was created.<sup>8</sup>

The appointment of this Commission marked an important advance in the New Jersey home rule movement. The Legislature, by resolution, directed the Commission to provide municipalities with the "largest possible measure of home rule, consistent with constitutional limitations . . . so that each of them, may . . . deal with every matter of local concern . . ."

This resolution also pointed to the abuses which had not been cured as yet under the constitutional prohibition--the number of bills general in form, but special in application (the laws referred to the Commission included one-third of all the statutes of the state)--the time consumed on local legislation--and the confusion and uncertainty of local law.

The Commission became known as the Home Rule Commission and it clearly desired to live up to its name. It gave serious consideration to a clause conferring complete power of local self-government on all municipalities. It discarded this proposal because of the uncertainty, discussed above, in determining which matters are of "local concern." The Commission saw that such a clause would leave the decision to the courts.

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7. Report of the Commission on Municipal Government to the State of New Jersey, (1908).

8. Report of Commission to Revise and Codify the Statutes of the State Relating to Cities and Other Municipalities. The members were appointed by the Governor under a 1916 resolution.

The Commission decided that it would be preferable to state in the act the matters which were of local concern. Then, if additional powers were needed, they could always be added by amendment. The Commission agreed that "the making of improvements and the rendering of service by the municipalities to its citizens, were particularly matters of local concern."

The powers granted municipalities in the Home Rule Act<sup>9</sup> included: the right to own and operate utilities, the right to acquire property, the right to engage in all activities which "any statutes now permit any municipality to engage in," the power to make local improvements, the power to assess benefits in connection with these improvements, and the power to undertake activities with other municipalities.

The police powers were considered of more than local concern and were left with the State Legislature. The Commission pointed out that any other course would necessitate the repeal of general laws regulating tenement houses, factories, etc.

Matters concerned with municipal finance were under study at that time by the Pierson Commission so the Home Rule Act did not cover financial matters. The Pierson Acts adopted in 1917 and 1918 included a local budget act, a local bond act, an annual auditing act, a financial statement act, and a Department of Municipal Accounts act. These laws stated the limits of local power in financial matters and provided for some state supervision.<sup>10</sup>

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9. P.L. 1917, Ch. 152

Now cited principally in R.S. 40:42-1 through 40:67-17.  
Also R.S. 1:1-2, R.S. 2:27-255, R.S. 44:3-1, R.S. 44:5-1.

10. The Pierson Acts:

P.L. 1917, Ch. 192  
P.L. 1916, Ch. 252  
P.L. 1918, Ch. 268  
P.L. 1917, Ch. 155  
P.L. 1917, Ch. 154

It is interesting to note that while the Home Rule Commission did not recommend the granting of home rule powers to counties because "public opinion was not sufficiently formed," it did consider the matter a subject for future study.

#### Optional Charters

The Home Rule Commission was careful not to interfere with the form of government in any municipality, for it felt that would be a violation of home rule.

The Legislature had already passed the Walsh Act,<sup>11</sup> which provided commission government for any community which adopted it. The commission form of government was popular at that time and the Commission seemed to believe that it was the answer to the needs of every type of municipality.

Later on a council-manager form of government was made available to the municipalities.<sup>12</sup> Other forms of local government, though, drafted in general terms seem to illustrate the legislative habit of passing laws in general form to meet the needs of single municipalities.<sup>13</sup>

Nevertheless, the provision of optional forms of government was another step forward in the home rule movement.

From time to time other laws have been adopted, amending these basic laws or adding new powers. The most notable of these are the cash basis act, the new local bond and budget acts, the local government act, the local fiscal

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11. R.S. 40:70-1 to 78-5

12. R.S. 40:79-1 to 85-12

13. Several old statutes, probably adopted for one municipality, are still in effect, making available various forms of mayor-council government. Among the more important of these are R.S. 40:103-4, R.S. 40:104-1 and R.S. 40:107-1. Other statutes of more limited applicability are also still on the statute books.

administration act, and the unsound municipalities acts.<sup>1</sup>

### The Status of Home Rule in New Jersey Today

Home rule in New Jersey stems from the constitutional provision prohibiting special local legislation. This prohibition left a void in local law which has been filled by (1) special legislation masquerading as general law, (2) general law of universal application, (3) classification of municipalities, and (4) optional forms and powers of government.

#### Special Legislation

It is the concensus of opinion today that the need of municipalities for power and forms of government vary in connection with numerous factors--size, density of population, location, economic status, industrialization, and political characteristics are some of them.

Special legislation may not be undesirable in itself. Local acts in large part fill legitimate needs. The trouble is not that too many laws are made but that too many laws are necessary. It is against the interest of both the Legislature and the municipalities to place the complete burden of making such decisions in the legislature.

It is evident that the constitutional provision against local legislation has lessened this burden. General laws have been encouraged and considerable home rule in respect to city activities has been granted.

#### General Laws

General laws, however, cannot provide for the special needs of different municipalities. The Princeton Local Government Survey in 1937

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14. R.S. 40:1-1 to 40:1-86  
 R.S. 40:2-1 to 40:2-54  
 R.S. 52:24A-1 to 52:24A-79 (3 acts)  
 R.S. 40:2-22.1

pointed out that "whether a municipality is a rural hamlet or a metropolitan center, the law gives it almost the same complete powers of local government."<sup>15</sup>

The report raised the question of whether communities of such widely different characteristics as Newark with nearly 450,000 population and North Cape May with a population of 5, Hamilton Township with an area of 115 square miles and East Newark with an area of one-tenth of one square mile, Hoboken with a density of 46,000 per square mile and Pahaquarry with a density of 4 per square mile, all needed exactly the same powers.

New Jersey has never made the experiment of requiring uniform charters for all municipalities. Other states have, but nowhere successfully. Such provisions have been repealed wherever tried.

General laws work best in matters in which the needs of localities are the same. They work worst when they treat of matters which concern only one or only a few municipalities.

#### Classification of Municipalities

The classification of municipalities is probably a necessary development where a prohibition against special legislation is not accompanied by substantial home rule powers.

Where classification has been ruled out, it has had serious consequences. In Ohio, the classification system was declared unconstitutional and the legislature was forced to adopt a general code for all cities. As a result, "the larger municipalities complained that they were undermanned in officials and deficient in powers--that they could not handle their big problems within the rigid terms of the general law . . . The smaller cities, on the other hand, found themselves burdened with much administrative machinery which they

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15. Readjusting Local Government and Services - Princeton Local Government Survey (1937)

did not want and provided with many powers which they could not use."<sup>16</sup>

The Home Rule Commission of 1917 pointed out that the classification system was "quite arbitrary and without logical reasoning to support it." These classifications of boroughs, towns, townships, cities, etc., however, still exist today.<sup>17</sup>

The Commission went on to say that since there was so little existing difference in powers, now "identical powers may be conferred on all municipalities of the state--." This was done in the Home Rule Act so that today, as the Princeton Survey reported, "Frequently self-government, service area, and taxpaying capacity are so far out of adjustment that public services can operate only in a cramped, distorted and expensive manner."

The report advocated the classification of cities according to their "required service range." This would be a difficult undertaking and would undoubtedly bring protests from municipalities whose powers were reduced. The Legislature has so far shown no intent to undertake the task.

However, unless such a classification can be developed, it is inevitable that some municipalities will have more power than they need and that others will have less, under the general law and classification system.

Classification does permit some flexibility in meeting the needs of different types of municipalities. As it has developed in New Jersey, however, it does not provide the amount of flexibility which is generally believed to be desirable. It can only do so by legislation, which, though classification in form, is special in application.

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16. William B. Munro, The Government of American Cities. New York, 1926 pp. 75-76.

17. Classification by population is also used in New Jersey - First Class: over 150,000 population; Second Class: 12,000 to 150,000 population; Third Class: All others, "except cities binding upon the Atlantic Ocean, and being seaside or summer resorts." There is one New Jersey class on a geographical basis, being "cities binding upon the Atlantic Ocean and being seaside or summer resorts." (R.S. 40:167-1, 2, & 3)

### Optional Forms and Powers of Government

One method of avoiding the bad features of special legislation, general laws, and classification is to provide optional forms and powers by general law. This method has the added feature of providing more home rule.

Under the optional system, the legislature provides that any municipality may adopt a law by referendum or by vote of the governing body. In New Jersey optional forms of government have been provided for boroughs, towns, villages, and townships. In addition, the commission form of government and council-manager form may be adopted by any municipality. Also, some optional powers have been provided.

It should be noted that some of the optional laws in New Jersey are one-way streets. The municipality may adopt them but has no way of repealing them. This was true at one time of the Commission Government law.

The optional system is not developed in New Jersey to a very high degree. For example, only one form of commission government and one form of council-manager government is available to a municipality, and there is no standard mayor-council plan of general application.

As noted above, most powers are given to all municipalities, whether or not the citizens or the governing body desires them.

### Comments on Home Rule in New Jersey

Municipalities in New Jersey have considerable home rule powers except in respect to the form of government. However, because of the lack of flexibility in the New Jersey system, some municipalities have more and others less power than they need or might like to have.

Prohibition against special legislation has led to more home rule for New Jersey municipalities but it has raised certain problems which have

not as yet been satisfactorily solved. These problems have to do with fitting government to the peculiar needs of the municipalities.

#### CONSTITUTIONAL HOME RULE

Since so many states have adopted home rule provisions in their constitutions, consideration should be given to the possible effects of such a provision in New Jersey.

#### Degrees of Home Rule

As noted above, home rule is never absolute. The principle of municipal inferiority is so firmly established in American law that no city ever has complete self-government.

The Colorado constitution goes furthest in granting powers to municipalities. It provides that the charter of a home rule city shall "be its organic law and extend to all its local and municipal affairs" and "shall supersede within the territorial limits---any law of the state in conflict therewith." However, even in Colorado the courts found that home rule cities were subject to general laws having to do with general matters. In matters of local concern, home rule cities are free from legislative interference. However, as in other states, only the courts can determine what matters are of local concern.

Even when the legislature has no constitutional mandate to set the limits of municipal home rule, it may do so. This is generally accomplished under constitutional clauses which provide that home rule city activities shall be "consistent with and subject to general laws of the state."

There is no function, no matter how local, in character which is immune from general laws. McBain concluded that home rule is "more largely a matter

of legislative grace than a constitutional right."<sup>18</sup>

Only two states other than Colorado have attempted to prohibit general legislation in local affairs. These are California and Ohio. (The Oklahoma Courts have held, however, that in matters of municipal concern action by a city prevails in the face of state law.) In other states the legislature is expected to regulate municipal affairs by general law.

#### Legislative Definition of Home Rule

The Minnesota constitution authorizes the legislature to "prescribe by law the several limits under which----" home rule "charters shall be framed." The Texas constitution provides for the erection of home rule charters "subject to such limitations as may be prescribed by the legislature."

In such states home rule is measured in terms of legislative enabling statutes. In Pennsylvania the legislature has failed to define any sphere of municipal discretion, and in West Virginia the legislature has maintained control over all aspects of municipal government. Home rule has, therefore, failed in those states. Home rule under similar provisions has operated well in Texas, Michigan, and Minnesota.

The attitudes of the people, their legislatures, and their courts usually have more effect on the operation of home rule than the constitutional provisions. Missouri and Oregon have similar provisions, but home rule had only a rudimentary development in Missouri (under the old constitution) while Oregon has a well-ordered system.

#### General Law Provisions

In New York the supremacy of the legislature is recognized but special legislation is prohibited by a clause which states "the legislature

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18. Howard Lee McBain, The Law and Practice of Municipal Home Rule, New York, 1916.

shall not pass any law relating to the property, affairs or government of cities, which shall be special or local either in its terms or its effect." Wisconsin achieves the same purpose by stating that home rule charters are "subject only to this constitution and to such enactments of the legislature of state-wide concern as shall with uniformity effect every city or every village." In these states, though legislative supremacy is maintained, general laws cannot be diluted by classification. McGoldrick has pointed out that this is consistent with home rule:

"If the legislatures of these states are carefully confined to uniform legislation on municipal affairs--whatever the term comes to include--the cities can be certain that the volume of such legislation will not be large or its character oppressive."<sup>19</sup>

#### The Courts and Home Rule

These constitutional definitions of "general laws" were designed to avoid one of the two major causes of litigation in home rule matters. The term "general laws" may be interpreted in a number of ways. As the Council of State Governments points out, "it may mean laws of general concern, as opposed to municipal concern; or laws of general application, as opposed to special application. Or it may mean laws of both general concern and general application. To complicate the situation further, even laws of general application need not apply to all municipalities since a classification of cities may produce the anomaly of a general law applicable to a single municipality."<sup>20</sup>

It is now clear in all states that general laws of general concern are binding on all municipalities.

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19. Joseph D. McGoldrick, The Law and Practice of Municipal Home Rule, 1916-1930, New York, 1933, p. 164.

20. The Council of State Governments State-Local Relations, 1946, p. 169.

The courts are continually called upon to decide whether classified laws are general laws and in many states whether general laws of local concern are binding upon municipalities, and of course there is always the no-man's land between affairs of "local" and of "general" concern.

The terms generally used in constitutional home rule provisions have actually left the final word to the judiciary. This is not sound--the powers that a municipality should exercise are a matter of political policy, not law.

It would appear, therefore, that it is preferable to have the scope of home rule defined either in the constitution or by the legislature (as in the New Jersey Home Rule Act).

Constitutional definition of home rule is much more cumbersome than legislative definition. In California and Colorado, constitutional amendments have conferred specific powers on cities after the courts had ruled them out. The delay in such a process is considerable. The constitutions of Oklahoma, Michigan, Ohio, Utah, and New York also contain some listing of powers.

The method of Minnesota and Texas might seem preferable. In these states the enabling legislation establishes a definition of "municipal affairs."

It may be concluded that the powers of cities must always be defined in some other way than by the localities themselves.<sup>21</sup> In many states they are defined by the legislature, in a few states by the constitution. Where powers are not completely defined in the above manner, the courts define the powers by determining what are "municipal affairs."

21. In New Jersey, "Any reasonable or fair doubt of the existence of the asserted power" of a municipal corporation, or any ambiguity in the statute whence . . ." such power "springs, - - - is to be resolved against the municipality, and the power is denied." N. J. Good Humor v. Board of Com'rs of Borough of Bradley Beach (124 N.J.L. 162, 11A2d 113, reversing 123 N.J.L. 21, 7A2d 824

### Form of Government

The difficulties discussed above have to do with the powers rather than the form of local government. The least controversial phase of home rule has to do with the structure of local government.

In home rule states, municipalities have the right to create their own form of government guaranteed in the constitution. There is considerable uniformity in the methods. Either the local governing body, or the voters by petition, may call for an election of a charter commission. The commission has the power to prepare a charter and submit it to the voters. The charter becomes effective through the favorable vote of a majority of those voting. Usually, charter amendments may be adopted in the same manner.

Most constitutional provisions are self-executing--the procedure is set out in the constitution and requires no legislative action to put it into effect. The Model State Constitution of the National Municipal League formerly provided for a self-executing charter, but no longer does so.

### The Advantages of Home Rule

The advantages of home rule have been summarized as follows by the Council of State Governments:

"A home rule charter is best calculated to give the people of a given city the form of government they consider best suited to their own need. The basic construction of local government is left in the hands of those directly governed. This technique has a practical advantage: the city's charter may be uniquely fitted to the city's needs. And a locally constructed charter puts an end to log-rolled special charters and to charters planned for a group of cities without fully meeting the problems of any single city. Home rule charters offer the greatest measure of local self-government possible under the American system of government.

"There is often a genuine need for local laws. In effect, home rule gives municipalities the power to pass (within limits) local laws for their own use, while simultaneously freeing the legislature from this burden and freeing the municipalities from legislative abuses inherent

in the practice of local legislation.

"Most important of all, home rule gives a much needed power of initiative to municipalities. The original constitutional provision, the activity of the legislature, and the decisions of the courts, singly or in combination, set the limits to which this local initiative may be put. Within these limits, however, local discretion with respect to local matters has free play. Localities are emancipated from the doctrine that each of their acts must spring from a specific statute. Day-to-day problems may be met without waiting for permissive legislation.

"It may be concluded that home rule is one satisfactory solution to the problem of state-local legal relations."<sup>22</sup>

#### CONSIDERATIONS IN DRAFTING HOME RULE PROVISIONS

The advantages of a general grant of power<sup>23</sup> to municipalities should not be ignored. Even though it leaves some uncertainty as to what are matters of local concern, it serves a very useful purpose; for it prevents the necessity of granting all cities the powers needed by any one of them--an unsatisfactory feature of the present New Jersey system. Under a general grant of power, each municipality can, in local affairs, determine what powers it needs.

Grants of home rule in general terms, by themselves, may lead to litigation and uncertainty. It is, therefore, desirable that some specified powers be given to localities.

A constitutional enumeration should be confined to those matters which are likely to remain within the realm of local affairs. This enumeration could include many of the powers now included in the Home Rule Act or it could be limited to the right of localities to initiate and adopt a form of government of their own choosing. In view of the satisfactory experience in New Jersey with

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22. Cf. Note 20, p. 170-171

23. Such as the New York clause: "Every city shall have the power to adopt and amend local laws not inconsistent with the constitution and laws of the state - - -."

legislative definition of local powers, a limited constitutional enumeration might seem preferable.

In any event the Legislature should have the power to enact general laws in the sphere of local affairs whether or not there is a general grant of authority in the Constitution. At the same time, some safeguard should be erected so that legislative classification cannot reduce home rule to an empty shell. The Model State Constitution of the National Municipal League permits statutes no matter how local in character so long as they are "uniformly applicable to every city."

The present constitutional prohibition against special legislation has worked only partially because it was not accompanied by a positive grant of powers to localities. However, if a general grant of power is made, this vacuum does not exist and general laws can be required.

Confusion may result if the grant of powers is confined to cities which create charters under the home rule provisions. It is probably better to grant the powers to all municipalities.

Even if home rule powers are granted, optional forms of government and optional powers may be provided by general laws. This combination of a liberal system of general laws and local initiative may be of benefit to both the State and the localities. Under such a system a wide range of local freedom may be retained even without the adoption of a home rule charter. This would probably be of special value to small communities.

If a system of home rule as described above were adopted, the role of the courts would be minimized.

#### COUNTY HOME RULE

Municipalities, such as cities and towns, are voluntarily formed. They perform activities in their own local interest and at the same time act as

administrative arms of the state.

Counties are sometimes called "quasi-municipalities," in that they are involuntarily formed and function only as administrative units of the state.

In recent years, however, the actual difference between cities and counties has tended to diminish. On the one hand state supervision has been extended to cities as well as counties, and on the other hand counties have increased the scope of the local services they perform. Some observers believe that it is inevitable that counties will take on more such services.

The Commission to Investigate County and Municipal Taxation and Expenditures in 1931 pointed out that "municipalities now provide certain services for which they are no longer the most efficient and satisfactory administrative units. These matters are no longer of purely local concern, and should be transferred to the wider jurisdiction."

The Commission pointed to the "wasteful duplication of services ---" and the "diffusion of administrative responsibilities --- in the perpetuation of numerous administrative areas that are inadequate to perform many of the tasks now devolving upon local governments." The county, the Commission believed, was better able to provide local services than such localities.<sup>24</sup>

The relation of the county to the state is also changing. The state is tending to deal more directly with localities in highway and school financing, for example. It is probable that in the future the county may act less as an agent of the state and more as a municipality rendering local services.

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24. Commission to Investigate County & Municipal Taxation and Expenditures.

Report #1, Section 3, pp. 209, 215 - 1931 (Second Printing)

### Flexible County Government

These developments may make it desirable to have the form and powers of county government less rigid.

At present authority for county affairs, except for the officers provided for in the Constitution, is in the hands of the Legislature. As in the case of cities, the Legislature could provide broad powers to all counties or classes of counties. Or it could provide optional forms of county government. <sup>25</sup>

### County Home Rule

The Constitution could also provide for county home rule. The character of counties varies as much as that of municipalities. It might be beneficial to allow each county to frame and adopt its own charter based on its own needs.

The Model State Constitution of the National Municipal League makes county home rule available subject to legislative definition.

Thirteen states now authorize county home rule or optional forms of county government. They are California, Georgia, Louisiana, Maryland, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oregon, Texas, and Virginia. Wisconsin gives home rule to county boards in regard to internal administrative matters, but not home rule. Counties have been slow to act under these home rule provisions. In New York several county home rule laws provide a number of options but only 3 counties have yet taken action. The same is true generally throughout the country. By March, 1946, only 9 counties had adopted

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25. In New Jersey, four classes of counties are based upon population groupings; less than 50,000; from 50,000 to 200,000; from 200,000 to 500,000. The two other classes are those bordering on the Atlantic Ocean, having more than, or less than 50,000 population. The sole structural variation between counties lies in the size and method of election of the Board of Freeholders. Depending upon past referenda, a county may elect Board members at large, or have them representative of the various municipalities; may have a large or small Board; and may follow one of several formulae for representation established by the Legislature.

the manager form of government. However, other forms have been utilized to replace the traditional county structure.

The Council of State Governments says that "Generally speaking, the reconstruction of county government to give it greater centralized leadership has achieved significant successes in those places in which it has been tried."<sup>26</sup>

#### Limited Home Rule for Counties

The status of counties is undergoing change. There may be real need for flexibility in form and powers of counties in the future. This flexibility can be provided under the existing Constitution by the passage of optional forms of county government or by permitting the voters of counties to frame their own charters.

There must necessarily be more control by the Legislature than in the case of cities for counties are more closely related to the State. Moreover, if localities are given a general grant of power confusion would result from granting counties general powers in the same territory.

The term "home rule" in connection with counties has a more limited meaning than when used in connection with cities. It includes optional charters adopted by the legislature as well as the right of drafting and adopting a charter in the county itself.

A constitutional provision in New Jersey would probably grant counties only the additional authority of framing and adopting a charter for their own government. It might, however, also grant the Legislature authority to adopt optional charters for counties. Either one or both of these provisions would undoubtedly increase the flexibility of county government and make it more adaptable to change.

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26. Cf. Note 20, p. 178.

THE NEED FOR CONSTITUTIONAL PROVISIONS  
FOR HOME RULE IN NEW JERSEY

Under the present Constitution a reasonably satisfactory legal relationship between the State and the municipalities and between the State and the counties could be developed by the use of rational classification and by optional charters.

However, the localities and counties probably will not be completely satisfied until they have the right to frame their own charters to meet their own needs.

The fact that New Jersey, as well as many other states, has had reasonably satisfactory state-local relations without home rule must be balanced against the fact that more and more states are providing constitutional home rule and no state, which has experimented with home rule, has abandoned it.

A P P E N D I X

A. LOCAL GOVERNMENT PROVISIONS OF THE MODEL STATE CONSTITUTION  
OF THE NATIONAL MUNICIPAL LEAGUE (1946 Revision)

ARTICLE VIII

LOCAL GOVERNMENT

Section 800. Organization of Local Government. Provision shall be made by general law for the incorporation of counties, cities, and other civil divisions; and for the alteration of boundaries, the consolidation of neighboring civil divisions, and the dissolution of any such civil divisions.

Provision shall also be made by general law (which may provide optional plans of organization and government) for the organization and government of counties, cities, and other civil divisions which do not adopt locally framed and adopted charters in accordance with the provisions of section 801, but no such law hereafter enacted shall become operative in any county, city, or other civil division until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 801. Home Rule for Local Units. Any county or city may adopt or amend a charter for its own government in accordance with such conditions as the legislature shall by law prescribe. Any charter framed as herein provided, or any amendments to a charter so framed, shall be submitted to the qualified voters of the county or city at an election to be held at a time to be determined by law, but not less than thirty days nor more than six months subsequent to the publication of the charter and its distribution among the qualified voters.

Section 802. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power.

Section 803. County Government. Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties, and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall

become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than 25 per cent of the total population of the county, and (3) in the county outside of such city or cities.

Section 804. City Government. Except as provided in sections 802 and 803, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.<sup>1/</sup>

The following shall be deemed to be a part of the powers conferred upon cities by this section:

- (a) To adopt and enforce within their limits local police, sanitary and other similar regulations, not in conflict with general laws uniformly applicable to all cities.
- (b) To levy, assess and collect taxes, and to borrow money and issue bonds, within the limits prescribed by general laws uniformly applicable to all cities; and to levy and collect special assessments for benefits conferred.
- (c) To furnish all local public services; and to acquire and maintain, either within or without its corporate limits, cemeteries, hospitals, infirmaries, parks and boulevards, water supplies, and all works which involve the public health and safety.<sup>2/</sup>
- (d) To maintain art institutes, museums, theatres, operas, or orchestras, and to make any other provision for the cultural needs of the residents.
- (e) To establish and alter the location of streets, to make local public improvements, and to acquire by condemnation or otherwise property, within its corporate limits, necessary for such improvements, and also to acquire additional property in order to preserve and protect such improvements, and to lease or sell such additional property, with restrictions to preserve and protect the improvements.
- (f) To acquire, construct, hire, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

<sup>1/</sup> General grant follows New York constitution. Last clause follows Wisconsin constitution.

<sup>2/</sup> Michigan constitution, article VIII, section 22.

- (g) To issue and sell bonds, outside of any general debt limit imposed by law, on the security in whole or in part of any public utility or property owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.
- (h) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state.
- (i) To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or appurtenant thereto; and gifts of money or property, or loans of money or credit for such purposes, shall be deemed to be for a city purpose.<sup>1/</sup>

Section 805. Public Reporting. Counties, cities and other civil divisions shall adopt an annual budget in such form as the legislature shall prescribe, and the legislature shall by general law provide for the examination by qualified auditors of the accounts of all such civil divisions and of public utilities owned or operated by such civil divisions, and providing for reports from such civil divisions as to their transactions and financial conditions.

Section 806. Conduct of Elections. All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

B. SELF-EXECUTING PROVISION OF 1941 MODEL STATE CONSTITUTION  
OF THE NATIONAL MUNICIPAL LEAGUE  
(Relevant to the Model City Charter)

City Charters

Any city may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may by a majority vote of its members, and upon petition of ten per centum of the qualified electors shall, forthwith provide by ordinance for submission to the electors of the question, "Shall a commission be chosen to frame a city charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise, at a special election to be called and held within the time aforesaid. The ballot containing such question shall also contain the names of candidates for the proposed commission,

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<sup>1/</sup>Paragraph (b) gives general bonding power, subject to general limitation by general law and paragraph (g) gives additional bonding power for public utilities, etc. Paragraph (i) is an addition agreed to by the Committee on Revision of the Model City Charter.

but without party designation. Such candidates shall be nominated by petition signed by not less than one per centum of the qualified electors and filed with the election authorities at least thirty days before such election, except that the signatures of more than one thousand qualified electors shall not be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the nine candidates receiving the highest numbers of votes (or if the legislature provides by general law for the election of such commissioners by means of proportional representation, then the nine chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter. The legislative authority of the city shall, if so requested by the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the printing of any completed charter and any separate and alternative provisions thereof and for their distribution to the electors as required by section 4 of this article.

#### Submission of City Charter to Electors

Any charter framed as provided in section 3 of this article shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, but at least thirty days subsequent to the completion of the charter and not more than one year after the election of the charter commission. Any part of such a charter, or any provision alternative to a part thereof, may be submitted to be voted upon separately. Any charter so proposed which is approved by a majority of the electors voting thereon, with the addition of such parts and as modified by such alternative provisions as may have been separately submitted and approved by a majority of those voting on any such parts or provisions, shall become the organic law of the city at the time fixed in such charter, and shall supersede any existing charter and all laws affecting the organization and government of the city which are in conflict therewith. The commission shall make provision for the distribution, not less than fifteen days before any such election, of copies of the proposed charter, and of any separate parts and alternative provisions thereof, to the qualified electors of the city. Within thirty days after its approval, the election authorities shall certify a copy of the charter to the secretary of state, who shall file it as a public record in his office and publish it as an appendix to the session laws enacted by the legislature.

#### Charter Amendments

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as is provided in sections 3 and 4 for framing and adopting a charter. Amendments may also be proposed by a majority vote of the legislative authority of the city, or by petition of ten per centum of the qualified electors; and any such amendment, after due public hearing before such legislative authority, shall be submitted to the qualified electors of the city at a regular or special election as in the case of the submission of the question of choosing a charter commission.

Such proposed amendments shall be published in the manner provided by law. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment and shall be certified to and filed and published by the secretary of state as in the case of a charter.

### C. HOME RULE PROVISIONS OF VARIOUS STATE CONSTITUTIONS

#### 1. Selected Provisions

##### Colorado

This is the most extreme home rule provision. It attempts to prevent even general legislation concerning local affairs. It is also self-executing and lists specific powers granted.

Art. XX, Sec. 6. Home rule for cities and towns.--The people of each city or town of this state, having a population of two thousand inhabitants - - - are hereby vested with, and they shall always have power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the - - - body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal election, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employes;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

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This article shall be in all respects self-executing.

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### New York

The New York provision is an example of home rule regulated by general laws. It also lists certain powers specifically granted to localities.

Art. XII, Power of cities to enact local laws relating to property, affairs or government. Sec. 12. Every city shall have power to adopt and amend local laws not inconsistent with the constitution and laws of the state relating to its property, affairs or government. Every city shall also have the power to adopt and amend local laws not inconsistent with this constitution and laws of the state, and whether or not such local laws relate to its property, affairs or government, in respect to the following subjects: the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all its officers and employees except of members of the governing elective body of the county in which such city is wholly contained, the membership and constitution of its local legislative body, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the ownership and operation of its transit facilities, the collection and administration of local taxes authorized by the legislature, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health.

Every city may repeal, supersede or modify any law which was enacted upon and which required, pursuant to the constitution, a message from the governor declaring that an emergency existed and the concurrent action of two-thirds of the members of each house of the legislature, insofar as such law relates to the property, affairs or government of such city, except that no city may, unless hereafter authorized by the legislature, (a) reduce any salary or compensation or change any working conditions or hours of employment if such salary, compensation, working conditions or hours of employment shall have been heretofore approved upon referendum pursuant to law, except upon approval of such city voting thereon, or (b) repeal or supersede any law enacted by the legislature relating to any pension or retirement system or to the making and review of assessments or to the judicial review of dismissals from the civil service.

The provisions of this article shall not be deemed to restrict or diminish the existing powers of any city.

### Texas

The Texas provision is an example of home rule under legislative regulation.

Art. XI, Sec. 5. Cities having more than five thousand (5,000) inhabitants may by a majority vote of the qualified voters of said city, at an

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election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state, or of the general laws enacted by the legislature of this state; - - - and provided further that no city charter shall be altered, amended or repealed oftener than every two years.

The parts not quoted provide for tax limitation and regulation of debt.

### Oregon

The Oregon provision is an example of home rule under legislative regulation, where the legislature acts under a "general law" provision.

Art. XI, Sec. 9. Corporations Formed Under General Law, Not Special.-- Municipal Charters Enacted Only by People. Corporations may be formed under general laws, but shall not be created by the legislative assembly by special laws. The legislative assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the constitution and criminal laws of the state of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the state of Oregon.

## 2. List of Constitutional Provisions

### Municipal Home Rule Provisions In State Constitutions

Arizona: Art. XIII, Sec. 2,3,4,5,6.  
 California: Art. XI, Sec. 8  
 Colorado: Art. XX, Sec. 6  
 Georgia: Art. XV, Sec. 1, Paragraph I.  
 Maryland: Art. XI-A, Sec. 1,2,3,4,5,6.  
 Michigan: Art. VIII, Sec. 20, 21,22,23,24,25.  
 Minnesota: Art. IV, Sec. 36.  
 Missouri: Art. VI, Sec. 19,20.  
 Nebraska: Art. XI, Sec. 2,3,4,5.  
 New York: Art. XII, Sec. 12.  
 Ohio: Art. XVIII, Sec. 1,2,3,4,5,6,7,8,9,10,11,12,13,14.  
 Oklahoma: Art. XVIII, Sec. 3,4,6,7.  
 Oregon: Art. XI, Sec. 2.  
 Pennsylvania: Art. XV, Sec. 1.  
 Texas: Art. XI, Sec. 5.  
 Utah: Art. XI, Sec. 5.  
 Washington: Art. XI, Sec. 10,11,12.  
 West Virginia: Art. VI, Sec. 39.  
 Wisconsin: Art. XI, Sec. 3.

### D. COUNTY HOME RULE PROVISIONS IN STATE CONSTITUTIONS

#### 1. Selected Passages

##### New York

The New York constitution authorizes optional forms of County Government.

**Art. IX, lb.** The legislature shall provide by law for the organization and government of counties. No law which shall be special or local in its terms or in its effect, or which shall relate specially to one county only, shall be enacted by the legislature unless (a) upon the request of the board of supervisors or other elective governing body of each county to be affected, or, in any county having an alternative form of government providing for an elective county executive officer, upon the request of the board of supervisors or other elective governing body with the concurrence of such executive officer of each county to be affected; or (b) upon a certificate of necessity by the governor to the legislature reciting the facts of such necessity existing in the county to be affected and the concurrence of two-thirds of the members elected to each house of the legislature. (As amended, 1938.)

**Art. IX, 2a.** The legislature shall provide by law alternative forms of government for counties except counties wholly included in a city and for the submission of one or more such forms of government to the electors residing in such counties.

No such form of government shall become operative in any such county unless and until adopted at a general election held in such county by receiving a majority of the total votes cast thereon in the county, and if any such form of government provides for the transfer of any function of local government to or from the cities, the towns or the villages of the county, or any class thereof, it shall not take effect with respect to such transfer unless the transfer or the form of government containing it, shall also receive a majority of all the votes cast thereon in such cities, towns, villages, or class thereof, as the case may be. (As amended, 1938.)

### Ohio

The Ohio constitution authorizes the voters of  
a county to frame their own charter.

Art. X, 3. Any county may frame and adopt or amend a charter as provided in this Article. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the Constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No charter or amendment vesting any municipal powers in the county shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in each of a majority of the combined total of municipalities and townships in the county (not including within any township any part of its area lying within a municipality). . . . (As amended, 1933.)

## 2. List of Constitutional Provisions

### County Home Rule Provisions In State Constitutions

California:	Art. XI, Sec. 7 $\frac{1}{2}$
Louisiana:	Art. XIV, Sec. 3.
Montana:	Art. XVI, Sec. 7.
New York:	Art. IX, Sec. 1.
Ohio:	Art. X, Sec. 1, 3.
Texas:	Art. IX, Sec. 3.
Virginia:	Art. VII, Sec. 110.

E. PROPOSED HOME RULE PROVISIONS  
NEW JERSEY CONSTITUTION

1. Home Rule Provisions presented to 1944 Legislature by New Jersey Committee for Constitutional Revision.

Provision shall be made by general or optional law for the incorporation and powers of counties, cities, and other political subdivisions of the state; and for the alteration of boundaries, the consolidation, the cooperation and the dissolution and the interchange of powers of such corporations.

Provision shall also be made by general law for optional plans of organization and government for counties and other local units, excepting school districts, which do not adopt a locally framed charter, but no such law shall become operative in any unit until approved by a majority of the qualified voters thereof voting thereon.

Any county, city, or other political subdivision, excepting a school district, may frame and by a majority of the qualified voters voting thereon may adopt a charter for the organization and powers of its own government, subject only to such specific limitations or requirements as may be imposed by this constitution or by general law.

By 2/3 vote of the governing body or on submission of petition of 10% of the qualified voters of any such unit, the question "Shall a commission be chosen to frame a charter for \_\_\_\_\_?" shall forthwith be placed by the local officer responsible for the contents of election ballots on the ballot at the next general election to occur not less than 60 days thereafter. One or more procedures for the selection of a charter commission and the framing and submission of its proposals to the people may be prescribed by general act of the legislature. If optional procedures are provided, the particular one to be followed shall be designated in the resolution of the governing body or the petition calling for the preliminary referendum. If the legislature fails to prescribe any procedure, the local governing body shall determine the procedure to be followed.

Amendments to a charter may be made in any manner provided for the framing and adoption of a charter, or by any method provided by said charter.

Special Legislation

(a) The legislature shall pass no private, local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a matter for judicial determination. No local act shall take effect until approved by a majority of the qualified voters voting thereon in the district to be affected, except acts repealing local or special acts in effect before the adoption of this constitution.

(b) In determining that an act applying to a particular class or category is general, not special or local, the courts shall find as a matter of fact that the criteria by which the units within the class or category are distinguished from other units represent differences that are genuine, positive, and substantial and have a material bearing on the applicability of the act. This

test shall be applied strictly with a view to preventing the adoption of legislation that is special or local in intent or in fact, and the rule of construction shall be applied against rather than in favor of any classification.

2. Home Rule Provisions prepared by George H. Hallett, Jr., Contributing Editor, National Municipal Review, June 4, 1947.

#### City Home Rule Proposal

The voters of any city by a petition and vote of the people may adopt or amend a city charter or create a charter commission to present a new charter or charter amendments to the people for adoption. Any such petition shall be signed by qualified voters of the city equal in number to at least ten per centum of the number who voted in the city for the office of governor at the last gubernatorial election, except that the number of signers need never exceed ten thousand. Any such petition shall be filed with the city clerk at least sixty days before the general election held in the year in which it is filed.

If the petition proposes a new city charter or an amendment to the existing city charter, such charter or amendment shall be submitted to the voters at the next general election after its filing and if approved shall take effect on the first day of January thereafter unless the charter or amendment specifies a different date.

If the petition proposes to create a charter commission to present a new charter or charter amendments to the people for adoption, the petition shall either name the members or specify the method of their election or appointment. The proposal shall be submitted to the voters at the next general election. If it is approved by the voters, the charter commission specified in the petition shall propose a new charter or charter amendments for submission to the voters not later than the second general election after the commission is authorized and at least sixty days after the charter or amendments are made public. The commission may submit a new charter in two or more parts so arranged that corresponding parts of the existing charter shall remain in effect if one or more of such parts are not adopted, and may also submit alternative charters or alternative provisions to supersede designated portions of a proposed charter or amendment if adopted. If any proposal submitted by the commission is approved by the voters, it shall take effect as prescribed by the commission at the time of its submission.

If there be a conflict between the provisions of two or more charter proposals adopted by the voters at the same election, the proposal receiving the largest number of affirmative votes shall prevail to the extent of such conflict.

The legislature may adopt regulations for the manner in which the requirements of this section shall be given effect.