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Ohio Constitutional Revision Commission  
Local Government Committee  
September 22, 1972

### Summary of Meeting

Present at a meeting of the Local Government Committee on September 22 in the Commission offices were Chairman Orfirer, Representatives Fry and Russo, Senator Calabrese, Mr. Ostrum, and Mrs. Hessler. Representatives of the League of Women Voters, Citizens Research, the Local Government Services Commission and the Chamber of Commerce were present. Guests were Judge Alba Whiteside of the 10th District Court of Appeals, and Attorney John Duffey. Staff members Kramer and Eriksson were present.

The chairman noted two new members of the Commission, Representative Robert Nader who is going to be on the Local Government Committee, and Mrs. Sowle. Mr. Nader is from Warren, Ohio and is replacing Mr. Wilkowski on the Commission. She also mentioned three public hearings of the committee--the first of which is at the Sheraton-Gibson on October 4 in Cincinnati, from approximately 10 a.m. to 4 p.m.. All three of them are on Wednesdays. The purpose of the Cincinnati hearing is to give some of the groups that have wanted to meet with us a chance to give us their views of local government and regional government in general and react to the kind of proposal on regional government that we have been discussing in particular. She said that the committee does not want to come out with a specific formal proposal of any kind without seeking out a variety of opinions. The second one is October 18 from 10-4 in Columbus at the Sheraton, and the third one will be in Cleveland on November 8 and it will be at the Hollenden House. Invited to the Cincinnati hearing are Mr. Anderogg, who is County Administrator, Mr. Robert Vogt, who is a consultant engineer, Lloyd Pistler who is an architect who has been active in drafting land use laws, Douglas Marsh from the Chamber of Commerce, Nelson Schwab who is an attorney in Cincinnati, and E. Robert Turner who is Cincinnati city manager. Another to be invited is an active black representative of the community. Another invited is Mr. Lawrence Kite, an attorney who was recommended by Mr. Schwab. He is now working with one of the Chamber of Commerce groups. Mrs. Orfirer asked the members to submit names of persons to be invited. Mrs. Orfirer suggested John Dowlin, who is the mayor of Sharonville.

The next committee meeting will be the evening of October 18, following the public hearing.

Mrs. Orfirer introduced Dr. John Hunger, Director of the Local Government Services Commission.

Dr. Hunger - Let's just back up for a few minutes and give some background information. Formed by the Governor on April 6, 50 members, and nonpartisan. About half the group are local government officials. Then another group of people who are citizen members, and just some regular citizens not representing any group at all. We met four times, full Commission meetings. The first one was the fifteenth of April, an organizational meeting setting up priorities. At the May 19 meeting, which was the second commission meeting, we divided up into four subcommittees paralleling the Governor's charge. We're to look at statutory, constitutional, financial, structural intergovernmental relations and then make our recommendations and keep the public informed as we go along, and that basically, is a very broad charge. Our committees are one on statutory, one on constitutional, one on public finance, one on local institutions of government and one on intergovernmental relations. Primarily we are beginning to do a couple of things. One is to design some questions, to ask and be raised. The second is to start an identification of problem areas. Ed Loewe chaired the



subcommittee on local government institutions and picked as an area for particular concern--county government, and attempts to reorganize and reform county charters, under the supposed home rule option. The statutory-constitutional committee looked at barriers on kinds of things that stand in the way of local government services, and delivery of services in large measure. Public finance looked initially at the whole question of who is spending what kind of money and how has this changed, when you categorize expenditure patterns by level of government. Intergovernmental relations has looked at the Department of Community Development's proposal for districts--redistricting for state agencies. The subcommittees have met a total of 12 times.

Mrs. Orfirer - The intergovernmental relations committee is looking at urban and suburban kinds of areas as prototypes for setting up regions.

Dr. Hunger - We started our hearing process with our first hearing basically trying to get more refinement on what public officials and citizen leaders thought were the problems, basically, of local governments, and the whole area of services from the system. We had a hearing in Cleveland, one in Columbus, Piqua and Marietta, and we have one scheduled for Cincinnati. We have so far heard from about 112 people--organization representatives, public citizens . . . what have you. We conducted these hearings simultaneously with the committee work. We have conducted a survey of public officials which is now being analyzed, which will be available in about two weeks. Starting October 10 and to be completed by October 20, the date of our next commission meeting, we're going to do a Citizen's Attitude Study asking the citizen, the receiver of government services, what they think the problems are, and what they think could be done to improve the situation, what kinds of priorities they set, and what kinds of services they would like to have and how they would like to fund them. That will be out on the 20th--so we will have some way of seeing what the issues are and what the issues are not. This is being done for us by The Ohio State University and the Ohio Poll Group. We have restructured into four new committees--one on regional governance. We're going to look at is what functions should be performed at the regional level first. Then second, what kinds of organizations. We're going to look at existing, ongoing regional organizations now and see how they are structured. And then we are going to get into the thing that you're currently into which is the structure of decision-making powers. And finally how you go about implementing our recommendations. We will consider such questions as population density, incidence of a particular kind of problems, various per capita kinds of questions, classifications schemes in terms of regional governments--that's one new committee. Another new committee is one on county government, precisely what kinds of functions should be performed at the county level and what sorts of organization. Should each county have the option or be mandated to create the office of county executive, should commission size be increased? Should commission members be elected by districts? How should counties raise revenues to support proposed functions? A third committee formed was municipal government--again asking the same kinds of questions--what kinds of functions should be performed at the municipal level? And here specifically are population size, and or density, and per capita income or taxing base in terms of significant delivery of services. Perhaps some municipalities don't have the funds or organization to perform properly.

Then we've formed a brand new committee--the township and neighborhood government committee out of our hearings and out of the survey. This is an idea that we really have to look at. Dolph talked about black-white and that kind of thing. We've heard from township trustees asking for home rule for townships. I think we

have to look at also the increasing amount of alienation, distrust, what have you, of government--and even on through to the voting. Now they don't even trust the system of electing people to office. And granted it wasn't very scientific but thinking of that kind of concern, I think that at some point our commission may begin looking at service delivery. I felt that the commission agreed we had to look at this small kind of neighborhood--take about a thousand people and make that your hypothetical idea of neighborhood; just as a few square blocks in a big city. If you look at what's occurred in rural America--the whole kind of county agent system, all the kinds of governmental support we've given the citizens in rural settings. The county agent acts as kind of an ombudsman; really he solves the farmer's every kind of problem, home economics; he can take care of the farmer's kids through the 4-H program; he does all of that. We've been doing that at great expense here. Why haven't we defined the same kinds of ideas for urban neighborhoods? We have them piecemeal--we've had a home improvements program here, and we've had a model neighborhood program there, but we've never tried under the same kind of idea of an agent being responsible for all the governmental programs. The county agent doesn't tell people how to spend their money or anything but he guides them. He acts as an input into the county courthouse, helping them to solve their tax problems, and how high should the silo be, and what kind of grain do they plant, and when do they plant it, how do they qualify for various loans and grants and what-have-you. Well, this committee is going to look at that. We hope that we're not going to issue one big report that just sits on the shelf. We hope to issue reports in the format of the Committee on Economic Development, which means that there can be further refinement all around the state after that. And then, finally, come up with a recommendation like "this alternative seems better than the second alternative . . ." or the third alternative for the following reasons, and then one step beyond the CED report is "Here's how we suggest you go about it . . ." and we're going to take a series of attitude surveys so that we will be able to get out a series about the decision-making involved.

That is a summary of where we are, then, and I just might add one thing. We are funded not by the State of Ohio--we are funded by a foundation. We are receiving money from the Department of Economic Development which is HUD funding. We have a staff of eight now. We expect to have our first set of legislative recommendations ready before the legislative session. There are some things that we are going to recommend that are quite simple for the executive branch to do--such as, I think this will be one of our recommendations--a better technical assistance program by state agencies to municipal and local government. The second is a better way of gathering and collecting data by state agencies. Right now we've run into the problem that the data is not comparable: you can't compare 1969 to 1972. You can't tell who spent what kind of money for what kind of thing. Right now there's a push on by the Department of Finance to start the beginning of an information system, and then we'll be able to do a better job of planning and programming services. You will really be able to know where you were, and where you are now, which will give you a better way of predicting where you might be.

Mrs. Orfirer - John, Thank you very much. I think this is something that we all needed to hear about, and be brought up to date on. I might just add that there are four mutual members of the Ohio Constitutional Revision Commission and the Local Government Services Commission, so that there is considerable back and forth interplay.

Mr. Fry - One question, Linda. John, if you do come up with recommendations for changing the Constitution, would you be recommending them to this Commission, or will they just be a part of your report for anyone who wants to bring them up?

Dr. Hunger - We would probably suggest them to you first. That would be a mistake to answer it quickly, just as it would be a mistake to call for major legislation without having first talked to, cleared with, the appropriate legislative agencies or leaders, and so forth. Now, whether they want to agree or not, that's a different question, but we're going to be submitting all four recommendations that way. With our call to the Governor, on a call to gubernatorial action, it will be now, "here it is, now react to it, and within an "x" number of weeks, if we haven't heard from you we're going to assume it's all right, and we're going to release the report.

Mr. Ostrum - And how soon do you expect to reach that stage?

Dr. Hunger - We have nothing to report right now. The Governor's Housing Advisory Commission recommended, because they're interested in regional government, that we at least hold joint staff meetings, and we have been doing that to see if we can't do a better job at least at the staff level, hopefully at the commission level, to coordinate our work. All of us are currently looking at regional government, at state agencies and departments.

Mrs. Orfirer - We're all looking at it slightly differently--we just want to have coordination among all the groups.

Dr. Hunger - You're worrying about the Constitution and question concerning that; the Housing Commission is worrying about planning; we're worried about functions--they're all the same things from different viewpoints.

Mrs. Orfirer - Thank you very much, John. Judge Whiteside, I am sorry that we are late in greeting you. You certainly have had a lot of local government experience in the city attorney's office in Columbus, prior to becoming a judge. We have asked you to come here and give us your views on the work that we have been doing. I would like to review the League of Women Voters position on local government, because they, as well as the Chamber of Commerce have been studying it. Under governmental structures, they have come out with a position in support of county home rule, support of permissive legislation to achieve county reorganization, support of measures to bring about solutions to metropolitan problems within and crossing county lines and to promote joint participation of governmental units to provide services, support of changing the Constitution to allow for maximum flexibility to permit state and local governments to share powers, support of replacement of 3/4 majority for adoption of a county charter for simple majority, support of empowering the General Assembly to set up procedures for combining local units of government, allowing the state as well as the people or local government to initiate proposals. Support of people retaining their present choice of form of municipal government. Their work has very closely coincided with the work that we have been doing in this area--and in our thinking and studying we have not been very far apart.

The Chamber of Commerce also has set up a special committee on Local Government and perhaps Mr. Loewe will describe for us what it is doing.

Mr. Loewe - We have a twenty-five member group, made up of chamber executives throughout the state from areas which have been particularly interested in local government problems, we have been meeting during the summer and intend to meet continuously, not as a policy-making group speaking for all the chambers which they cannot do because each chamber is an autonomous group, and must speak for itself

on all the policy issues, but as a group that can convey something about the work that John Hunger's group is doing; and that your Commission is doing--that can provide face-to-face feedback, rather than trying to do it all the time by the written word, which we are of course also doing. Another footnote is that the Chamber of Commerce is also very interested in the approach of the Constitutional Revision Commission towards providing for constitutional changes and it is working very hard to convince the public that this is the proper way to do it. And as a result, we hope that this method will be retained.

Mrs. Orfirer - Thank you very much. And now, Judge Whiteside, you have the floor.

Judge Whiteside - I have opinions on what policy should be, but I don't think I should get into that area. I come here somewhat confused about discussing this with you because first, I do not know whether or how this will fit into the overall plan for changes in local government structure, or if any overall plan is contemplated. And secondly, I know this is a preliminary draft, and there are bound to be certain problems, and I do know this because obviously, the courts will end up interpreting anything you do eventually--you will have lawsuits no matter what you do.

The first thing I see that is not immediately clear to me is exactly what the purpose of the regional unit of local government is to be--what function they are to perform explicitly. This is true because we start out with the purpose being described at first as providing governmental and proprietary services on a regional basis for the protection and advancement of the health, safety and welfare of the inhabitants of the region. Well, there is very little of anything that is not included in that, if anything. Any service including police forces and what have you would be included in that and everything relates to the health, safety and welfare of the inhabitants. Then, however, I note that they are given two specific responsibilities: one is for formulating and revising a comprehensive plan for the development of the region as a whole and portions of the region, and for regulating such development in accordance with such comprehensive plans. Development again is a very broad term and can cover any number of things. Exactly what it means is not clear to me at least. The next part, I think is the clearest part of all--as for the power of local agencies to review applications for federal and state grants-in-aid. That seems pretty easy to understand. Then, in addition, it is given power to perform any function or any service on the behalf of any political subdivision which consents to having such service performed. Then in addition, we have a provision to propose any function or service, and here we have a description of the types at least--including, but not limited to, certain types . . . --but that is only the consent of the political subdivision, and it says that initiative and referendum shall be secured to the people of the region for every such measure, and of course, it provides for a veto of any measure by the General Assembly, except for initiated measures. But then it says that regional units of government shall have all regional powers as may be necessary and proper for carrying out the powers and duties provided for in this section, so I really do not know how it's going to end up--which part controls over which--as long as someone else is not doing something, can they go ahead and do it--it's not clear to me exactly how they operate. In addition, I notice that in regard to any functions, it is not clear exactly how this will come about--how the consent of the political subdivisions involved directly will be obtained. There is no provision as to whether or not they are equal facilities or how subdivisions and facilities will be taken over or compensation made. It's not clear.

There is another interesting feature which is the kind of thing I noticed immediately--it provides that no measure shall be passed until notice shall be given

to all interested parties. And who are the interested parties, I am not sure. It is a difficult thing to decide in terms of the law who are and who are not the interested parties. When you get this kind of language you have problems in many areas of the law. What I'm really saying, I guess, is that you have to be more specific. The more specific you can be in your provision, in some sense, it's easier for the courts later to review the provision and interpret and decide the issue. On the other hand, the more general you make things, the easier for them to function.

I notice one more thing. The only place the power of taxation is mentioned is where it indicates they may provide for areas within the region for the purposes of taxation. There is no general provision of what type of taxation is referred to or what powers of taxation are granted, and to whom, if any. Also it provides that the General Assembly may provide by three ways for the form of government: one is by general law, one is by special provision, and also by charter. This relates only to form of governments, but form of government does not include enumeration of powers, or determination of powers or responsibilities. Later on, there is a provision that they have all governmental powers relating to or necessary to carrying out the powers described in this section, except as may be specifically denied by law to all governmental units, or by special act. There at least may be prohibitions on exercise of power. My real impression is that these regional units of government are essentially being created to meet the problem that has been known in Ohio for some time of overlapping and conflicting provisions for services--water supply, sewers, transportation. This is, I assume, to make for orderly development in Ohio. This seems to me to be the general purpose behind forming such regional units which could control and manage. Many of our problems today transcend existing subdivision boundaries, they even transcend state boundaries.

Mrs. Orfirer - I think that you're right about what our general purpose is--these regional forms were contemplated as a necessary unit to provide the kinds of services, the kinds of answers to problems which cannot be provided on state or local levels. And your first and second points which refer to how wide the field can go--about police service, for instance--were not intended. It has been our understanding that the regional government would not attempt to do the kinds of things that local governments could do for themselves--the police force being an example.

Judge Whiteside - The problem with that is what can be done effectively and better--and again, the broad powers given might well be interpreted to include such a thing.

Mrs. Orfirer - The problem does have to be of such a nature that it transcends one unit of government and has a major impact on the area.. Gene, I'm sure you could probably respond to some of the comments.

Mr. Kramer - I don't know if I can add to, or respond to the comments, I would like to point out what are the problems in any kind of an undertaking such as this. One of the main problems is drawing the fine lines between specificity and allowing the kind of flexibility that you'd want. As far as the last question is concerned, we began last night taking up the question of how taxation would be provided for and what powers would be given in that area, and we are still considering all kinds of ideas and possibilities. The point you made about interested parties is a good one, and it probably needs more definition, and I think that that's one of the problems we'll have to work on. You are pointing out these areas, and I think that is useful. It is important not to become so specific that no regional unit of government could be created.



Mrs. Hessler - If the whole thing were very much more general than this, and simply were an authorization to the state legislature to set up such forms of regional government, as could deal with problems beyond the capacity of existing local government, would this be better from the point of view of court tests and flexibility combined? It would not mandate anything . . .

Judge Whiteside - Well, it would depend in part upon what the legislature did, under the authority, and obviously would not have as much a problem with the constitutional provision, but you might have as much of a problem or more with the statutory provisions, and including the problem of whether or not they exceeded the authority granted unless it's spelled out clearly.

Mr. Kramer - Isn't it true, Judge, from a very basic standpoint, that when you get into a division of powers kind of operation, the only way to really avoid very difficult questions is to give one party or the other the conclusive right to determine the situation. Otherwise, the courts really do have to decide.

Mrs. Orfirer - I think that the advantage and the stumbling block in terms of the drafting is the concept that is important to all of us--the ability for the gradual assumption of powers, so that you aren't overstructuring where it is not necessary, and you are not understructuring where powers would be needed. And this was the reason behind the three forms which you were asking about. We all know as you pointed out that we are going to need planning around the state. Our intention was also to give some areas of the state regulatory powers. Other areas may not need for a considerable amount of time to be beyond that step--but in this way we could provide for powers in a specific area according to need. One of the advantages in this was the fact that it does not in any way bring about, or cause to be abolished, any of the existing structures. Now this may gradually come about, depending upon how many powers are assumed by a region or agency, but in terms of practicality of long term effects, we decided to find this middle ground where we are mandating but we are reserving a place where whatever problems may develop may be aired out. This was one of the advantages we hoped to include.

Judge Whiteside - I felt it might be written to be more broad than you had intended. There is really no limit to what can concern the development of the area--it could include almost everything you could think of. And if you are talking about development; you're talking about a lot of different things--it can cover any and all of many things--the general power to provide governmental services means anything that the government provides for the people. And in the last paragraph, it provides for all governmental powers which may be necessary for the carrying out of the powers and duties provided for in the section, which could almost be construed as almost a municipal corporation on the part of a municipal corporation.

Mrs. Orfirer introduced former Judge John Duffey, a former member of the Commission.

Mr. Duffey - You've already mentioned some of the items I would comment on. Maybe we can see where we agree and disagree and get the committee going on some of it. I think we all agree that we need some organization of governmental structures particularly something in the form of regional government. I would like to suggest, as I think perhaps the Judge has already done, that you distinguish between perhaps what is necessary in the way of constitutional revision in order to enable the State of Ohio in any of its form to deal with the problems, and what might be desirable. I was on this committee, and I see only one minor constitutional problem--that arises in the area of Article XVIII, Section 3, the first clause. It says "municipalities

shall have all powers of local sub-government" in so far as any of these regional plans involve the exercise of police authority, the Constitution already provides that that authority is subject to general law, and if there is any conflict between any regional operation and a municipality in the area of police or sanitary operations, we have no legal problem, no constitutional problem, because the state law would control. The only theoretical area of problems is the so-called powers of local self government which are not police, and sanitary regulations, whatever that may be and one other area, utilities. And you do have problems on financing, but I'm putting that out of mind for the time being. I think pre-emption doctrine takes care of all that. So, I think that is the only area in which the Constitutional Revision Commission is faced with a potential barrier at the constitutional level to recommend what should be done. That brings us over to what kind of constitutional revision might be desirable to facilitate reorganization of government. And I have previously publicly stated that the Constitution should be as bare-boned as possible. I see no reason or purpose from the viewpoint of political science in dealing with the details in the constitutional provisions. I don't think this is politically feasible, and I don't think that it can work. I am dubious of providing a mandate to the General Assembly to do something. You have the provisions that the General Assembly must be mandated, create a certain number of regions and establish their boundaries. As I see that thing legally, you get into a situation where the question whether this region should be a region or what the boundaries of the region should be, and you can't get it out of the Rules Committee, and the legislature fails to act. Now, where are we? So the Constitution says they shall do it, but they don't do it. You have only two legal answers to this thing: first, the old doctrine that it is a political issue and therefore there should be no recourse anywhere else. And the second possible approach is the somewhat controversial doctrine of Baker vs. Carr, in which the United States Supreme Court said that apportionment can be done by the court because people were deprived of their right to vote. When you're faced with the problem that the legislature won't do it, the only potential is political responsibility in terms of the fact that the voters are likely to get upset. This is not likely to be of significance here. Voters in this area of regional government are undoubtedly fed up with the structures of local government, but they don't want anything specific, and they're not going to vote against any legislative candidate because of his position on this kind of issue. Except maybe in a local context. If the courts do step in and draw the regional boundaries, I think we have had enough experience that the courts are not particularly expert in drawing boundaries or in properly reflecting the needs of the electorate. The courts are men who are trained in law, and law training doesn't make them experts in much of anything except analysis of law. And if they are expert in district drawing or determining what is a good unit of local government, it is because of something in their background other than law. So I don't really feel that there is any effective way that you can mandate the creation of regional governments in the Constitution. I think it is a peculiarly legislative function and when I say legislative I don't mean only the General Assembly. I mean it is a legislative function, not a court function. To that extent, I would have to suggest to you that I would be strongly opposed to the creation of a constitutional provision mandating the creation of regional governments. I would be opposed to putting the burden on the General Assembly of creating boundaries, both initially and if there be any changes. I would suggest to you that it's very difficult to get the House and the Senate to work effectively on such a specific problem as the particular boundaries of a regional government, or the changes.

Mrs. Orfirer - You are aware that this calls for a boundary commission.

Mr. Duffey - Yes, but that is strictly advisory. The draft provides that the

General Assembly shall divide the state into, and establish the boundaries, thereof --as I understand it the General Assembly cannot delegate those authorities. And in addition the Commission only recommends.

Mrs. Orfirer - As I recall from our discussions when this was raised, this was raised by some of our legislative members here who pointed out exactly what you pointed out--that it is really most unreasonable to expect the legislature to sit down and start drawing boundaries and so on, so it was for this reason that we got into the idea of a commission to sit down and draw the boundaries which would then be recommended to the legislature.

Mr. Duffey - Was there any thought to the possibility of the General Assembly passing a statute creating an agency for the purpose of guidelines, standards and criteria of what is a region and what would be the boundaries of regions? Was this possibility excluded? I think it is perfectly legal right now; I don't think you need a constitutional change. The board of education does it that way right now for school districts. You gave them the authority to create the districts and consolidate them. I am thinking of doing that without any change to the Constitution.

Mrs. Hessler - If it is going to be an effective regional government, there would have to be some sort of constitutional change.

Mr. Duffey - I'd like to hold that a bit. I am inclined to think not, with the exception of the specific provision I mentioned earlier. I am inclined to think that you don't need any constitutional change, in the present structure in the Ohio Constitution, and that the state would have full authority to create local government units with the possible exception of the two areas which Judge Whiteside and I referred to earlier which are Article XVIII, Section 3 and Article XVIII, Section 4. That would take constitutional change.

Mrs. Orfirer - They're not small matters.

Mr. Duffey - I'd postpone that one--I don't think it's difficult.

Mr. Russo - I'd like to ask John Gotherman how he feels on this area of regional government.

Mr. Gotherman - I agree with Judge Duffey, so far, as far as reading the draft and expressing the things which the draft would do. There are very few things of a regional nature that the General Assembly can't do, today. They can create authorities, subdivisions of the state of Ohio. All powers of local self government, I'm not sure what John has in mind there--but certainly the statewide concern doctrine presently limits local government more than people generally realize. Presently the General Assembly could probably limit the powers of local self-government of noncharter cities if it chose to do so. Another problem in the draft is that the General Assembly can set the boundaries for each district as time goes by--that is change the boundaries. Now that can get us into the area of special legislation--introducing a bill or legislation for the specific purpose of changing a boundary--and I suggest that history indicates that you're right into logrolling. I don't think that you can avoid it, if you put the legislature in a position where they are enacting special legislation establishing boundaries for local government, which I would think from a political science viewpoint would be most undesirable.

Mr. Duffey - I'm a little intrigued by the county line provision. The county boundaries which were established in Ohio in the 1803-1851 period amounted to 10



square miles of the area. They have no significance whatever--so I see no reason to continue county lines as a significant constitutional concept. Originally, it was only so that everyone was a reasonable distance from the Courthouse.

Mrs. Orfirer - Would you suggest then that if regional boundaries are made, that there would be no necessity to take county lines into consideration?

Mr. Duffey - I would strongly recommend that. There is no point in county lines. We are strongly considering inside the state bar and hope to present to the General Assembly shortly, the need for revision of the trial court system because county lines are completely outmoded to determine the existence of the common pleas courts, for example. The Columbus metropolitan area stretches into Fairfield and Delaware, but it does not include the northern part of Delaware which is farm area now. Likewise in Fairfield County and Madison County--so that here the boundary lines would have no relationship to metropolitan Columbus.

Mr. Russo - We have to be realistic, though, or the proposal will not pass.

Mr. Duffey - I would tend to agree with you that politically, there's no sense in trying to restructure all the existing subdivisions, because it creates too many problems, but you're going to create a regional government which has limited authority to deal with specific matters, then I think you're going to have to delineate those in terms of the physical operation of the sewer system or the capacity of the police department to operate, and those kinds of boundaries are not by boundaries such as counties.

Mr. Russo - May I just point out to you that the Cuyahoga County regional sewer concept hasn't been tested in court that I know of--never been appealed to a higher court. There still hasn't been a real court test of it, outside of common pleas. And then there's some question as to whether the court has the authority to form it or not.

Mr. Duffey - If we're talking about leaving, at least temporarily, the present governmental structures, or at least putting a new one on top, then I do suggest that it is very unwise to tie this structure up here to existing physical boundaries of present governmental units. For instance, you have also buried in here the provision that no region can divide a municipality. Well, I'll point out to you that the Columbus sewer system is divided by the Olentangy River--and it is very distinct--two sewer systems draining into the same river--and it would be very easy to split the sewer systems into the West Olentangy River and the East Olentangy River and we're talking about a regional government that is controlling the sewer systems? Why shouldn't we split the sewer region regardless of the fact that it happened to be part of other regions for the city of Columbus. We now have school districts which are not part of the city of Columbus, but we have all kinds of districts within the city, and with cities getting as huge as they are now, whatever a city is, whatever a municipality is, and we're talking about developing a regional structure, I don't think that you can tie yourself to those kinds of political boundaries that don't have significance in terms of physical structure; they don't have significance in terms of operative necessity. I would really suggest to you that city boundaries, county boundaries, are all political boundaries which were created for other reasons, and have no relationship to your structures. Actually the Columbus water supply is also similarly divided.

Mrs. Orfirer - I think we are all very aware of the need, as we talked about last night, not only to think about larger forms of government, but also the way the

people feel about government--this neighborhood concept. If there is no particular reason to divide the city into two regions, don't you think there is psychological value in retaining the city as one region? So that when you are citizens of a city, you are all also citizens of the same region. I would think that it would be very divisive to have people who may live across the street from each other be citizens of different regions.

Mr. Duffey - On that level, I would defer very heavily to Mr. Russo. Those are the practical factors. You take two steps forward and one step back in this kind of area, and you hope that you don't do the reverse. I think you would be absolutely foolish politically not to do that. But I was addressing my remarks only to what I assumed was the level of constitutional structure that you were suggesting here. Now on the constitutional level, I wouldn't do it. On another level, whoever does it, the General Assembly or a special body, I would think that you would be foolish to do otherwise. You shouldn't do such a split without a very substantial reason.

Mrs. Hessler - Judge Duffey, are you indicating that according to the Constitution as now written and the court cases that the state legislature could set up regional governments, which could control development in a multi-county area including such powers as zoning and direction of local water works lines, and that kind of thing.

Mr. Duffey - The only area that might be dubious would be the area of say, capital improvements. The city decides it is going to build something here and it interferes with the regional plans, and then we're into a battle--whether the city can go ahead regardless of the State of Ohio or the regional government. The evidence would suggest that the city would lose in court, as Mr. Gotherman indicated, because I am reasonably certain that the court would say that this is a matter which has interest to more than just the municipality and therefore is of statewide concern. The courts are very pragmatic, saying that nearly anything that has impact outside of political boundaries of any one so-called governmental unit, like a city, if the General Assembly chooses to treat it as a matter of statewide concern, then they aren't going to interfere. If you pass a law that says "policemen shall wear white shirts, as opposed to blue shirts," I think the court would probably agree that this has no significance outside the city of Columbus, or Cleveland and therefore the General Assembly can't require them to wear blue shirts. But if it has any economic or social significance, like transportation, I just can't believe the court would not find it to be of more than local concern.

Judge Whiteside - I have difficulty in this area finding anything definite in the court decisions. I think they vary according to the situation. Certain things, including regional planning, have been upheld. One particular clear instance is the electric power transmission lines which serve not only that community but other communities, and location of them. It is hard to say that the court will do this, or the court will do that, on a given situation. It really depends upon how much impact it has upon a local government, upon the areas outside.

Mr. Duffey - Yes, there's only this narrow area of nonhealth, nonregulatory law that there might be a conflict.

Mrs. Hessler - And of course the state does have the extra club of distributing funds, which the General Assembly can use if they're a little leery of what course to follow.

Mr. Duffey - I really see very little of a constitutional problem involved in the state handling the area of regional government right now. I am concerned about

two problems: one is the political science problem of doing it on the constitutional level, and the other is the mechanics of some of the things in the draft. You have a provision about framing charters, you have provisions about initiative and referendum; you have not defined these terms. You have a ready reference there in Article XVIII, to a good mechanical structure for who votes, how to vote, etc., and it has already been interpreted by the courts. Now I am a little intrigued by this provision that provides that the executive and legislative authority in this region may be elected or appointed. I assume that some place in the game we are sure that we will have a democratic system and structure. What really has me most concerned is the reference to the region making or forcing compliance with the plans, referred to as comprehensive plans. I really think that in that area you ought to request somebody in planning from Western Reserve or OSU to discuss it with you. The concept of all modern planners is that a plan has got to be flexible as to concept, goals and objectives. A plan consists of the gathering of data, as accurately and efficiently as you can, sorting it out and organizing it, and trying to establish broad sets of goals and objectives which you'd like to accomplish. This would involve all areas of planning in the urban sense--planning and physical development of your community, planning in the areas which affect physical development like schools, transportation, sewer systems, and a lot of other things that are not so physical. Many years ago, professional planners--I'm talking about 15 or more years ago--gave up any thought that their plans would be adopted by legislative bodies--distinguishing between a comprehensive plan and a tool to implement this kind of planning. Tools are devices or things such as zoning laws, subdivision laws, major street plans which are adopted, capital improvement budgets as means of trying to get improvements, so that the legal aspects of a plan, in terms of implementation, is done through a series of regulatory laws which are interrelated. We used to have concepts in a lot of cities and still do where the planning commission adopts a plan, and then the zoning takes a 2/3 vote of council, or a 3/4 vote of council, or something. I think most planners right now consider that primitive and there is need to discuss with a professional planner a little more thoroughly the conceptual idea which you have in here. I am not trying to knock down the underlying idea here, I'm saying that the choice of phraseology in here is (1) not appropriate and (2) from the legal viewpoint would create horrendous implementation problems. Judge Whiteside said a minute ago, I think, for the legal viewpoint the comprehensive plan covers what I have just suggested: data, analysis, goals, and objectives covering anything that affects the region and therefore when you say the regional government may adopt comprehensive plans and implement them, you have virtually said that they may have all powers of municipalities, townships, counties, and everything else. You automatically have given them the world right there in terms of power. I don't necessarily object to that, but I think you can understand that implementation of plans would therefore be a graft of constitutional power to adopt zoning, subdivision, street plans, transportation plans, water control plans, bus plans, school plans, site plans, etc. The idea of adopting a plan bothers me, and then the idea of laws to implement that plan should, in my opinion, be recognized as a broad grant of substantive powers to regulate all aspects of physical development, and to that extent you would tend to delineate regional government power. I don't think you have accomplished it, I think you have given them extremely broad authority. On this aspect of what affects more than a single political subdivision, or what affects a region as a whole, that language is almost identical to what you find in the Regional Planning Commission statutes which represents what was a haphazard effort, some years ago, to try to preserve some autonomy for cities in zoning and subdivision regulation, and also I think for the allocation of planning funds. I don't think it worked there. I think it is almost impossible to identify anything of significance which doesn't have impact in more than one of the political subdivisions of a region.

Judge Whiteside - I read the portion "affecting more than a county or a municipal corporation," as referring only to portions of the region and not to the whole and the whole is not limited by the provision as I read it. They can adopt a plan for the region as a whole, or, if they choose less than that they must have a plan that affects more than one political subdivision.

Mr. Duffey - It is difficult for me to think of a plan which doesn't affect more than one political subdivision. The City of Columbus says the Thoroughfare System shall be as follows: . . . etc. It is very difficult for the Regional Planning Commission to draw these kinds of lines, and what's really happened in Ohio the Mid-Regional Planning Commission is a political accommodation, in that area. Mid-Ohio has the same kind of standard for its authority. It sort of makes a political accommodation with Columbus and the suburban area about what it's going to do.

Mr. Gotherman - I would think that true with legislation. It's a political accommodation as to who's willing to give up what portion.

Mr. Duffey - As a criteria to suggest what they should or shouldn't do, this is valuable. As a legal criteria, it's probably nothing you can get your hands on. Nothing that a court would really be able to say, "The region can't do this because it only affects one unit, and doesn't affect more than one unit." It would be very, very difficult to apply such a standard.

Mrs. Orfirer - You're looking at it as I see it, John, from one very valid standpoint. Turn around and look at it from the other standpoint--what do we do about those matters that do have a strong impact on neighboring communities if not on the whole region? Where does the authority as a whole come from to arbitrate this or to make the planning--if one municipality is going to build a great commercial or industrial center on the edge of another--where in your opinion should the arbitrating source be? I'm not so sure about political accommodation.

Mr. Duffey - I would try to draft it from the viewpoint of delineating functions to be performed by the regional government. We're starting out with the thought that you're going to create a regional government that has relatively limited scope of power, because of the reasons that we've been talking about, I would not define it in terms of functions which have more than such significance between this division and that, I would define it in terms of sewers, in terms of water courses.

Mrs. Orfirer - In the Constitution?

Mr. Russo - No, no--then how would you ever get it changed when necessary?

Mr. Duffey - If you had a constitutional draft, I would make it very broad. I would say "the region may deal with the problems of the region," period. Why worry about whether it affects more than one subdivision or not--just simply say that the region may have powers to deal with such functions as are regional in nature."

Mrs. Orfirer - Well, that certainly isn't any more limiting than this?

Mr. Duffey - Put it another way around. I think this limitation is looser; if somebody felt that this limitation was a limitation, I don't think that it is. I think it is probably a meaningless limitation. I'm putting it to you this way; if you want the limit, in the Constitution, you're going to have to come up with a different drafting approach and probably a different conceptual approach than you have here.

I just don't believe you can do it like this.

Judge Whiteside - Now, Judge, aren't you really saying just what I said? In substance, if you're trying to be broad, you're being too specific, and if you're trying to be specific, you've been too broad.

Mr. Duffey - My own personal viewpoint would be that on a constitutional level you wouldn't want to delineate this--it has to be delineated on a more flexible basis--on a statutory basis.

Mrs. Orfirer - Supposing that we put in the Constitution the broad language that you just gave as an example, do you still feel that this can be accomplished without a constitutional provision--that this can be done by the General Assembly?

Mr. Duffey - Yes, I am inclined to think so. The most that I would suggest from the constitutional viewpoint is a constitutional provision that says that the General Assembly may create regional government, and that the regional government law shall control.

Mrs. Orfirer - Mr. Russo, what would you say are the chances of the legislature going ahead and formulating regions with these strong powers?

Mr. Russo - Well, I don't really know if the legislature can constitutionally form these regions with these strong powers. They can form them with some powers but I don't think they can form them with strong powers without a mandated authority by constitutional change voted on by the people. About six years ago we had an issue on the ballot that was for the formation of the kinds of services that we're talking about here that made a constitutional change.

Mr. Gotherman - It was the metropolitan federation amendment approach, but I don't think that that's absolutely necessary to accomplish some of the things that could have been done under that approach.

Mr. Russo - We lost a lot of money, then, because it cost \$1500 to pass the House and Senate and then put it on the ballot besides.

Mr. Gotherman - The attempt to have constitutional authorization for regional government was to authorize either a very narrow or a very broad government. It would have been a total metropolitan government, or it could have been a sewer district.

Mr. Duffey - The way that they have been politically clobbered is that they implicitly involve consolidation, merger, and abolishment of existing governmental units.

Mr. Gotherman - The General Assembly doesn't have any reluctance to pass bills of regional impact, Senator Maloney's S. B. 105 which was a very strong one had very strong terminology. I've noticed any reluctance of the legislature to pass regional bills, at least in the last few years--The Transit Authority--

Mr. Russo - But that's unconstitutional, isn't it? It can't go into effect in the Cincinnati area where they wanted it.

Mrs. Hessler - The reason it can't go into effect is that we can't have the bond issue to finance it.

Mr. Gotherman - There's no great legal argument about the authority of the General Assembly to do things which are broader than just local government.

Judge Whiteside - The General Assembly has always had the power, except it is limited by the Constitution, a couple of them in the area of education, another one in the area of municipalities which has already been brought up, and of course the requirements of the counties.

Mr. Duffey - I would rather we passed some kind of simple constitutional amendment to get rid of the questions that you're raising, but in my mind, the wording of it would be very simple. "The General Assembly may create regional governments, and any law duly adopted by a regional government that may conflict with that of a municipality, the regional government controls."

Mr. Gotherman - Wouldn't you explain it that the General Assembly can decide whether or not it is a conflict?

Mr. Duffey - It would take some careful drafting there; you're getting into a delicate area, there, John, as we well know--the pre-emption vs. the technical concept of conflict--I would probably prefer to have it reversed, strictly the conflict concept. Pre-emption doctrine goes too far.

Mr. Gotherman - What I mean is that the conflict concept would mean that if whatever the region wanted to do was in conflict with the local ordinance, then the General Assembly can't even say "the regional--that there's no conflict."

Mr. Duffey - Oh I see. I want a three tier. I would have the municipal power down here, and in the absence of any conduct by the state or the region, the municipality could continue doing whatever they please. If the state steps in and there's a conflict, between what the state and the city have done, then the state law controls, and likewise on the regional level, so it would be three tiers as I see it. It seems to me that that concept you have to retain. I want the freedom in both the region and the city to act on something when the General Assembly hasn't chosen to or can't get around to agreeing on it. What I likewise think is that if the state steps in, they ought to be able to step in on any subject matter, and if the region steps in, they ought to be able to step in on any subject matter.

Judge Whiteside - I think you're saying that there should be a constitutional provision authorizing the General Assembly to establish regional government and, in essence, an amendment of section 3, perhaps 4, 5 and 6 of Article XVIII of the Constitution which authorizes the powers of municipalities when they exercise local self-governments to the extent that such exercise is not in conflict with an exercise by regional government and the same with their utility powers.

Mr. Duffey - Yes, but about the only constitutional limitation I would put on the region is to say "The region shall have such powers as are related to the region." I don't want to require a statute to be enacted to give the region the power.

Mrs. Eriksson - So you're really giving them what we think of as home rule powers.

Mr. Duffey - I would follow Article XVIII up to a point, but there are some things of statewide concern that are broader than the region. The traditional structure of local government in America and English history, anyway has always been that it is an agency of the state, and therefore like the department of highways, or anything else, has only what the General Assembly chooses to give it. That, in the area of local



self-government, as we all learned in the 1800's and the 1900's, is simply inadequate and the courts began to play games with it by broadly interpreting the statutes, and so on, getting away from it. There really is a conceptual, and I think a very important step forward, that occurred in the early 20th century or so, where a lot of states, including Ohio, adopted the opposite constitutional concept, and that is that local government has got all the powers you need to be anything you want, and the state has the authority to step in and veto or pre-empt the area wherever they want. That basic approach has been adopted in many states--California and Michigan among many others. The municipality or local government can act in the absence of controlling state law. Ohio tried to go one step further and say that we are going to give you not only that kind of authority--power to deal with your local matters--and prohibit the General Assembly from interfering with what you have chosen to do which I think was reflective of the political philosophy at that time, and it had a lot of value to it. I think it reflects the political philosophy of a lot of us right now; we sometimes get far more government than we wish to pay for. But it isn't realistic in terms of the function and operation of government and the complex society we have now, particularly in the area of urban government. It simply isn't feasible to operate on that basis, so as I have suggested several times that part of the Ohio concept was a noble experiment that turned out to be a fiasco and what's happened is that the court's recognition of it has been chopping it down. I don't want, however, to go back to the old common law concept with "this region has to go to the General Assembly and request authority" on everything it wants to do--on the contrary I would like to give it the same kind of broad scope of authority to do whatever has any significance to the region subject to the General Assembly coming in and taking over the field by pre-emption through legislation.

Judge Whiteside - You would adopt an Article XVIII in essence, would you?

Mr. Duffey - I'd abolish the delegation doctrine, and give them the powers subject to pre-emption by the state.

Judge Whiteside - And they'd still be an agency of the state?

Mrs. Eriksson - What would you do about counties in this concept? Would you give counties the same type of residual powers?

Mr. Duffey - Of course as I envision it in the long run, they're going to be phased out. If the regional government is reasonably effective, they ought to be phased out rather quickly. If they remain it will be because of political pull.

Mrs. Eriksson - So essentially you would probably not alter the county constitutional provisions then?

Mrs. Hessler - He says that the higher level of government shall pre-empt over the lower, whereas in the county article it says if there is a conflict between the county and the city, the city prevails.

Mrs. Eriksson - Well, but he's leaving cities with their powers and giving powers to the region. Now you can't also give powers to counties.

Mrs. Hessler - You can if you do it within the statutes.

Mr. Duffey - Theoretically you could but it seems to me not advisable.

Judge Whiteside - So in essence the counties would be changed to the regional forms.

Mr. Duffey - Most of the functions that the counties are performing right now--most of the physical functions, anyway, not the administrative ones, but the physical functions that the counties are performing now can be made regional, and I would think that those are the ones that we are going to making regional.

Mrs. Hessler - Could you just simplify the language all together and make it less hard for the public to take by saying "Let's see, the state shall have the power to create counties or other forms of regional government?"

Mr. Russo - John, let me ask you a question. Is anything functioning in Ohio on a regional basis outside of the grant concept clearing house? We have a regional sewer authority in Cleveland, but that is only in the county. It doesn't cross over county lines.

Duffey - There are a lot of things functioning on a regional basis but not any general unit.

Mr. Russo - Nothing with any power except to clear grants that I can see. I don't know of any multiple functions.

Mr. Loewe - Judge, what is the practicality of an amendment that would give the regional government super powers over the municipality that fast. Isn't that a bad political scare?

Mr. Duffey - I don't suggest it was a constitutional enabling provision--to enable the General Assembly to create such a region. As a political matter, I would stick to what your draft suggests here, which is a gradual assumption of powers.

Mr. Loewe - But the legislature would have to decide that the regional government could assume existing local government operations by the very fact that it wanted to.

Mr. Duffey - Yes. Or as the committee draft does, let the region decide how much and how fast it absorbs powers, which I think would give room for the interplay of the political structure and the people to respond. The region is making the decision as to how rapidly and what functions they begin to pick up. I think if you structure it politically, the representative government is going to be all the interplay within the community of what they want and what they don't want.

Mr. Loewe - But wouldn't you have to initially put that into the Constitution, because the eventual powers, whatever they might be, would have to be spelled out in the amendment? And that would scare a lot of municipalities right away.

Mr. Duffey - Well, I think it might scare them, yes. But I don't know how to do it any other way. If you do anything in the area of constitutional revision, you simply need an enabling provision that would enable the General Assembly to create regional governments which have regional powers.

Mrs. Hessler - Do you have to knock out your general law provision? If the legislature has a general law, then they have to treat all areas of the state alike, but chances are there will be two or three areas that will feel the need for some type of regional government long before others.

Mr. Duffey - I think you've got lots of flexibility building here--with three tiers. A general law that says if you form a region you start with this government, whatever



structure you set up, and then you have a provision that says the General Assembly can go ahead and set up multiple alternatives--three or four alternatives which can only be adopted by a vote of the people and finally you have a provision, that says once they are established, they can draft their own structure.

Judge Whiteside - Could the legislature directly create the regions if it only created one region or two regions, or three or four regions for the entire state, as opposed to the procedure for a municipality, a procedure by which they could be created by themselves.

Mrs. Hessler - Dolph Norton was opposing the provision for mandating the state to set up regions throughout Ohio, saying that he felt that there was a worse need for regions in the metropolitan areas of Ohio, rather than Appalachia and some of the other areas.

Judge Whiteside - If you desired to give the power directly to the General Assembly to create districts or regions you could put the language in the provision that they would not be required to be created in the entire state.

Mr. Duffey - You could create a constitutional provision which would enable the General Assembly to create regional governments--what we used to call municipal powers. Let's call them regional powers--how does the General Assembly exercise its authority? Well, by the same way the General Assembly does in any other case. They can do it directly if they want; they can create the regions, and also create a general law as to the structure of the regions. Or they might, as is frequently used with modern problems which are very complex and involve details, fact-findings, discrimination for political reasons--they delegate that authority to an agency, commission or board, to a staff. I must recommend that from a political viewpoint we are most unrealistic to ask the General Assembly to create boundaries of regions.. I don't think it's fair to ask the General Assembly to dig into the complex factual problems that you ought to review in trying to decide how much area could or could not be organized into regions for a specific purpose. What functions, etc., I think you give that to a commission, or a board or an agency, and you give them a staff, and you require them to give everybody a chance to be heard, and everybody has their say-so, and then the commission hands down their decision which is subject to the court's review for unreasonableness or failure to follow statutory criteria, or exceeding their authority, but let them make the basic decision.

Mrs. Hessler - They can't make it at the local level.

Mr. Duffey - Right, they can't make it at the local level, and you can't make it at the General Assembly level in my book.

Mrs. Orfirer - In other words, whether it's an agency or a commission or whatever, it would be subject to the court's final say rather than a recommendation to the General Assembly. The General Assembly would have to abide by the decisions made by the boundary commission or this agency.

Mr. Duffey - I would think that without constitutional change the General Assembly could include in such a statute the power in that commission to consolidate, or merge, existing political units and that could include cities. I don't want to put that on the ballot. In my book that's already there. I think they've got the power to do that right now, and I would simply give them the power to merge and consolidate governmental units just as the board of education merges and consolidates school districts. I want people on this agency to be responsible for the decisions to the legislature. If they're not elected, make them short terms with the approval of the Senate.

Mr. Russo - We were so broad in the Ohio General Assembly that we passed the bill in the House that prevented the merging of the two state campuses.

Mr. Duffey - I think that the only way that these things can be done is to put the responsibility somewhere other than on the elected representatives. You can always go back to the General Assembly if you don't like what this Commission or agency is doing and ask them to correct the legislation, chopping down the powers, and correcting what the agency is doing.

Judge Whiteside - What you're saying is that the legislature can provide the procedures for changing boundaries, merging cities and what have you, except counties.

Mr. Kramer - Judge Duffey, nearly everything in this draft grew out of the committee's prior discussions. The major factor discussed first in the idea of requiring the regions to be set up and giving them powers was the experience the state had with the alternative form of county government which was first authorized by the Constitution in 1934-35, which was not implemented until 1951, and many people felt that the implementation was terribly unsatisfactory even when this was implemented, so I think that the committee, in reaction to that, had the feeling that perhaps mere authorization would not really accomplish anything.

Mr. Duffey - But there's no sense of urgency in the regional proposal. The only alternative I see to what you're suggesting is something along the line of the apportionment board of the Constitution--that is a constitutional commission, elected at large, as is the board of regents in many states.

Mr. Kramer - The people will not initiate this themselves, because there has to be a way first to create a regional constituency. In other places the experience has been that the matter never would have succeeded, if submitted to a referendum, but that they have proven themselves after they were created.

Mr. Gotherman - There has never been any authority in Ohio for people to create a regional agency. It would have to be created by the General Assembly I think. I don't know of any way except political subdivisions may create councils of governments, and in some areas they have created them, and in some areas they have performed rather general, and in some areas, rather specific regional services through councils of governments. They didn't adopt the Urban Services Amendment--to find out whether there is a constituency.

Mrs. Hessler - Well, we have seen it at the county level. They have been unable to create a government at the county level, but it is more political when you throw in several counties.

Mr. Gotherman - The problem also involves partisan politics--I don't think we've ever had a vehicle by which people, if they're Republicans or Democrats, could create a regional agency which could be partisan or nonpartisan. The county charter issues have been all political--party issues as I understand it.

Mr. Duffey - A few mechanical problems: I note in your contractual clauses here where you provide for contracts within the region and other subdivisions--sort of a delegating of powers back and forth, that perhaps haven't given thought to a more decisive political science concept of ceding of powers--as between sovereignties like England and France or the Common Market, or something you talk about ceding. It has the legal sense of giving the power itself, as opposed to a contractual concept where

you control the scope of the authority given by the contract. Here I'm talking about ceding powers between the region and the local bodies and it ought to be left flexible to go both ways. There ought to be the possibility that the region gives up some powers and decides that maybe it could be operated better on a local basis than they would do themselves, and we ought to be able to cede it by the function or the description of what we're talking about, cede the police power or the police department or the sewer system or whatever it is, and just carry with it all legal significance.

Mrs. Orfirer - I think that answers one of the problems that Dolph brought up last night that these contractual powers things don't really work very well.

Mr. Duffey - If you do stick with the provisions about the General Assembly doing certain things or being required to act in certain ways you haven't clarified whether these would be General Assembly actions only in the sense of a joint resolution which does not take a gubernatorial veto or if you're talking about statutes which bring the governor into play. I notice in the draft you use the word "motion," which is inappropriate when you are talking about the General Assembly--talking about the General Assembly acting on its own motion. I've already mentioned the problem of conflicting problems between regional and local government and regional and state government. Incidentally, that observation about the General Assembly equally applies to your provision about the veto power of the General Assembly. I think you ought to clarify whether you're talking about a veto by joint resolution as is true under Article 4 or a veto in the sense that it also requires the act of the Governor. I think I have pretty well covered the most of the problems I had thought about.

Mrs. Orfirer - You've been very helpful, John, and you've certainly raised some very good points.

Mr. Duffey - Mechanically, I also think Mr. Russo recognized some of the General Assembly problems which you talk about in sessions down here and sixty days to act and so on. You have to bear in mind the practical political problems. The General Assembly meets January 1 of the even-numbered years--you expect them to act in 60 days--March 1 is not realistic considering the way the General Assembly operates. Secondly, sessions are not so clear any more, particularly since we have annual sessions.

Mrs. Orfirer - To get back to this mandatory vs. permissible establishing of regions. I don't fully understand the objection to stating it in a mandatory form. I understand that it is difficult to compel the General Assembly to act if they don't want to, but then I think that this just further compounds the problem that we were talking about of the legislative inaction, as it's called. I would think that we would want to put it as strongly as we could, to exercise as much power as possible, and then if they still don't want to do it, we may be stymied. But to just leave it and say you can do this if you feel like it negates a great deal of what we're trying to accomplish.

Mr. Duffey - You have to try to break the problem into three parts. One is simply the situation where you put it in the Constitution to enable the General Assembly to act, and whether or not they act is pretty much up to them. The second is to say we want them for sure to act, and if they don't we want somebody else who will, and one way to do that is to create some kind of constitutional body--a constitutional board of commission.

Mrs. Hessler - Couldn't you give that power to the Governor?

Mr. Duffey - If you are going it on a constitutional level you can put it anywhere you want. You can put a triggering device in there, or, instead of giving it to the General Assembly, you could give it to a court, board or commission, and probably this goes back to the old idea of getting it out of politics. It does have the advantage of the board having a single purpose--it means people taking office who will do the job. You can provide that if the General Assembly doesn't do it within a certain amount of time, then the other body takes over. The third possibility is that if you mandate it and the General Assembly doesn't do it, the court may, under the doctrines in the apportionment cases, where they found that a basic constitutional right--the right to vote was being denied. I don't think the courts are the answer to all our problems, and I don't even think we should put them in the spot of trying to answer all our problems, because they're not equipped.

Mrs. Orfirer - If you have faith the General Assembly will act, you don't have to have a mandate. Now if you don't have faith, you have to have a mandate, but you haven't accomplished your purpose by saying they shall act because they still may not act. So you need something to take care of the alternative if they don't act. I want to thank you gentlemen very much, and we certainly have a lot to take up at our next meeting. Thank you again. You've been a great help.

OHIO CONSTITUTIONAL REVISION COMMISSION  
Local Government Committee  
Public Hearing--Cincinnati  
October 4, 1972

Summary

Note: The Local Government Committee of the Ohio Constitutional Revision Commission held three public hearings, of which the one in Cincinnati was the first, to offer an opportunity for persons interested in the problems of local government to suggest needed constitutional changes, and to comment on a proposal to add to the constitution provisions for regional units of government. Following is a summary of the comments made by those attending the Cincinnati hearing, which was held on October 4, 1972, at the Sheraton-Gibson Hotel in Cincinnati.

Those who attended the meeting and participated in the discussion were: E. Robert Turner, Cincinnati City Manager; Richard Finan, Mayor of Evendale; Robert Vogt, a consulting engineer; Carl Westmoreland, social planning counsel; R.A. Anderegg, Hamilton County Administrator; and Willard C. Pistler, Jr., an architect. In addition to the Committee Chairman, Mrs. Linda Orfirer, other Commission members and staff were Mrs. Hessler, Mr. Carson, Mr. Kramer and Mrs. Eriksson.

Mrs. Orfirer opened the meeting by welcoming those present and explaining the purpose of the meeting. She briefly reviewed the contents of the draft proposal for regional units of government which the committee had before it for discussion, and which had been supplied to those meeting with the committee.

Mr. Turner: I am speaking primarily as an individual, not a representative of the City. I have been involved in regionalism for the last 7 years, the last 4 of which I was Executive Director of Southeast Michigan Council of Governments in Detroit. In that period, I served on the governor's commission on local government and more particularly on the regional subcommittee. I am also on a panel of the National Academy of Public Administration to try to develop a regional government in 2 metropolitan areas of this country. One of them might be Columbus.

I have one observation looking at your draft. It would be a great leap ahead of most of the other states, but whether that's a good idea politically I have some question. In my years in regionalism both in California and Michigan, I discovered one of the reasons we haven't emulated the Toronto experiment or that we haven't really gone to any real bona fide metropolitan government in this country is that the political process here, the demographic nature of the populations, the racial nature of the population in metropolitan areas, materially inhibit the development of regionalism. Political considerations were important in Michigan. After well over a year of study and consideration, we determined that the state could divide itself and it had already done so on a merely informal basis into 13 or 14 regions, and that the state should form a regional boundaries commission that would consider appropriate boundaries to avoid taking part of a city or county of one region and dividing it into two. This would create for state administrative purposes the sub-state regions..and, in so doing, encourage local government to form regional planning entities.

It was felt there that the local units of government along broad guidelines should

form a regional entity that would be composed of at least 50% representatives of the local government. Some say that local officials at the regional level are faced with certain constituencies at their local level of responsibility and cannot do a good statesman-like job. But we felt it was absolutely necessary to guarantee to the existing local units of government that consolidation would not take place or the elimination of certain kinds of government would not take place. At the same time we left open the possibility that the other 50 be elected from the entire regional constituency or by districts. It may not work; the split between the elected local representatives and the elected regional officials might be such that it could not govern with any kind of reason or continuity.

Mrs. Hessler: It has the advantage of educating, in a regional context, the local elected officials and at the same time keeping the regional officials from being divorced from local government.

Mr. Turner: That's correct. Any decision that is made on the regional level must be made with the pre-understanding of local problems...then the question arises as how do you perform functions; how do you carry on your functions of a regional transportation system or a regional sewer, water, solid waste system? We suggested in that report the governing body of the region, however the selection, would determine the need for regional instruments or regional devices. And in so far as it is possible they would create regional authorities with the concurrence of the legislature within those regions, hopefully on a multi-purpose basis. In other words, you have had a regional environmental quality authority that covered the functions of water, sewage, waste, etc. You had the transportation authority developed that would be multi-mobile in character... to some extent dependent upon the state to break down services on the basis of how the state determined need. If you were talking about the problem of central cities maintaining zoos, and museums, and other cultural facilities for the benefit of the whole metropolitan area, perhaps cultural and recreational activities should be combined in a multi-purpose authority. All the multi-purpose authorities would be coordinated and controlled by the larger regional general purpose agency, thereby eliminating the problems of special districts.

Mrs. Hessler: Isn't this what they've done in the Twin Cities area?

Mr. Turner: This is essentially a state planning and development council. They are moving in the direction of consolidating functions into larger multi-purpose activities. In terms of financing, the state might share tax bases, principally funding the operation of the regional agencies. The trend is in the direction of revenue sharing.

The Public Administration Panel is operating on the assumption of the Committee for Economic Development Report on Reshaping Government into Metropolitan Areas which suggested strongly that we could not even talk about regionalism unless you were talking to some extent about decentralization and neighborhood government. Bud Anderegg has suggested that neighborhoods secede from the City of Cincinnati and form their own government... That is not what I'm talking about in terms of decentralization, You have to provide decentralization that would give to the neighborhoods some autonomy...and some opportunity to provide new services that can be described as neighborhood services. The only example of state legislation in this area is in Indiana which addresses itself to the neighborhood governments and the way they are determined and organized.



Mr. Kramer: Under the present Ohio Constitution, under the Municipal Charter provision, it seems that we probably have a good deal of ability to provide for forms of decentralization of our cities through Charter enacted devices. Except for the large cities, do you see a need to decentralize further than is already done except for the outer ring of suburbs? Or do they already represent the kind of local neighborhood government that you feel is needed?

Mr. Turner: I think, we need relatively small units of government...I know it has caused some great problems in the large metropolitan areas of this country. But I think their existence is not the kind of threat that regionalists think it is and is one of the reasons we're talking about decentralization within the central cities.

Mr. Kramer: The problem of decentralization exists then only within the large cities?

Mr. Turner: Right, I advocate moving slowly. People point to Unigov, Jacksonville and Nashville...I would say that those are no more than city-county consolidations. They are not regional governments. In order to be they have to be multi-county. Consolidation of cities and counties has been happening at least since 1913. We need something other than that for controlling and maintaining the needs of the large urbanized areas of this country.

Mr. Finan: I read this draft as indicating the death knell for local governments in Ohio because when we begin to talk in terms of removing home rule provisions, we're talking in terms of removing from local government the powers to do many of the things that they do especially well. Many people continue to believe as government gets bigger, governments get better. And we continue to get to the point of saying that we must eliminate the small municipalities. I come from a very small municipality, 2,000 people, but it serves 25,000 people during the daytime because they work there. But I have also been very active with the Hamilton County Municipal League, which comprises all 39 governments of Hamilton County. I would say that of the 39, 37 of them would probably oppose this proposal. We are looking now at one of two things: either eliminate the local government entirely and impose the super-government principle upon it, or we are simply adding another level of government. And frankly I think we have enough problems with the levels of government we have now. If we add one level of government then to me we should be subtracting one level of government someplace along the line. Now it is obvious to me that we're going to subtract the small municipalities that currently exist. And here in Hamilton county, this is just not going to be popular. The people get a level of services that is unknown to big government and they look at big governments as they occur in other cities in the United States, not so much the City of Cincinnati, but bigger cities than that. And as the cities get bigger the services decrease, poorer and poorer until eventually many of these cities are ungovernable. Many of them today begin to look around and say maybe what we ought to do is what Mr. Anderegg said, maybe we have to decentralize.

Mrs. Orfirer: Mr. Finan, I don't think that there is anything at all in our consideration that leads to wishing for any dissolution of the small levels of government. I think you said that if we're going to have a larger level superimposed then you'd feel that some smaller level ought to be gotten rid of. But this has not been our thinking. What you're talking about are the services that are best done at the small level. Do you feel that there are some services either in a town the size of yours or a town that is much larger that are not being well-handled?

Mr. Finan: No doubt about it. There is no way that a small municipality can handle, for example, air pollution; there is no way that a small municipality can handle a mass transportation problem exactly right; it is probably not economical to handle a sewer problem. Water distribution, electric supply, this thing is not there. But we're saying in this draft "you must." Up to now the provision has always been "you may." And I think that's a very good point.

Mrs. Hessler: The federal government has already established required regional control of air pollution.

Mr. Finan: The State of Ohio sets standards and says you must do it either in your community or you must be part of a group.

Mrs. Orfirer: For federal funds and federal planning. But this proposal does not say that. There are no "musts." There are enabling provisions that, subject to referendum, permit certain area-wide functions such as the ones you've just pointed out as being logical ones could be taken over by a regional government. It doesn't take away any of the local government services such as police, fire, garbage collection. Whatever the neighborhood and local services that are conducted now would remain there.

Mr. Finan: But if we say "provide governmental and proprietary services on a regional basis for the protection and advancement of health, safety, and welfare of the inhabitants of the region," that's pretty broad.

Mr. Kramer: That language does not grant any powers to the regions. It's descriptive language, descriptive of the type of region that is to be created. It is to be of such size and composition that it is suitable for that purpose because later on specific powers are given to the regions to take over on a selective basis, functions which do have a regional impact or impact in the region larger than any of the municipalities. So that obviously, if you're going to give the region that kind of power it has to be of such size and composition that it can accomplish the purpose.

Mr. Finan: Let's say, for example, that today the communities of Hamilton County would like to develop a solid waste system on their own. It's my full understanding that everything apparently exists in the law of Ohio to permit communities to band together to form such an overall governmental agency in order to develop such a system. The air pollution program in Hamilton County has been an effort that has existed starting from the City of Cincinnati at least and has gone right on up through the valley. But each time it's been an effort where the communities themselves have said "we must be involved in this and we will join." As opposed to someone coming to them and saying "all right you will join the solid waste disposal group or you will join the county air pollution control commission."

Mr. Turner: Unfortunately, however, I am afraid that circumstances are requiring to some degree that transition from may to shall. If the solid waste problem comes, you may make the statement that all they have to do is get together. They don't get together frequently, they haven't been able to get together for example on transportation.

Mrs. Hessler: Or on air pollution.

Mr. Turner: And those problems are going unanswered.



Mrs. Hessler: As a matter of fact, both solid waste disposal and air pollution are health matters and the state has responsibility for health. It'd not a local responsibility.

Mr. Finan: The state has power to enforce air pollution control, and didn't do it. Now they tell us that we have 88 counties in the State of Ohio and we'll get around to the Village of Evendale when we get there. And that's exactly the point that I'm trying to make; because they have 88 counties, or break it down to 5 counties or 6 counties, the level of services decreases dramatically. The only way we get air pollution services is to be part of the inter-community group and we pay our fees and they have certain officers available. If we depend upon the Board of Health of the State of Ohio, and the city of Sharonville can tell you some great stories about trying to get help from them in closing certain dumps that existed, we will wait until hell freezes over.

Mrs. Hessler: It seems to me that the state is considering districts because at the state level in Columbus they can't do some of the regional type things as well as they could if they decentralized the performance of some of them. In the Twin Cities Area when they decided to set up a seven-county regional government with taxing powers and a good many more powers, this was looked upon by Minneapolis and St. Paul as a protection of their home rule powers against the legislature. Health and solid waste disposal are state responsibilities. Could they be better performed at a regional level where we are represented; you in Evendale, we in Cincinnati, and so on, or at the state level?

Mr. Finan: Let me give you an example, the other way. The state has responsibility for maintenance of all state roads and highways. They have divided the state into regions; we belong to District 8 which encompasses I think 7 counties or 8 counties. Okay, you try to get them because the street lights are out on the state highway and it's their responsibility, and they're out for two or three months before they finally get around; finally you get to the point where you hire the people yourself to do the job yourself and you say the heck with the money.

Mrs. Hessler: You don't want to build the highways though, do you?

Mr. Finan: If we had funds, we'd build those highways. We don't build them because it is the state's responsibility.

Mr. Carson: I'm not a member of this committee. I'm a member of another committee dealing with finance and taxation. I'm really not aware of all this committee has done. When I was in the legislature, I was involved very deeply in drafting and passage of the alternate forms bill. Could you tell me what view the Hamilton County Municipalities take on that and whether it might be a solution?

Mr. Finan: The Lingle Committee is a local commission which was given the task of trying to look at the services by local government as opposed to county government and here in Hamilton county to propose some legislation of an alternate form of government that would be put upon the ballot. And we spent longer than a year looking at and trying to develop many of the things that we're looking at right now. And I think we finally did come to a level of services that could be produced, that could be made available and that could be done on a county-wide basis, at least in the subcommittee I was involved in. The Municipal League and the mayors were in agreement; they had reports day in and day out on what was going on in that Committee, and they were agreeable to the things that were being proposed. An example was some type of county organization for providing

engineering services for streets and traffic lights. It's a tremendous problem in small municipalities. That this could be done on a contract basis. And the mayors in general were very favorable to this kind of thing. And I argued, we may do it but we won't have to do it. If the service was there, it would be used. Okay, the result was that after a year and a half, the Lingle Committee died a slow terrible death; nothing came out of all our efforts.

Mrs. Orfirer: Mr. Finan, why are services from regional govt. that you have had experience with so bad? Is it financial? Is it just the nature of regional government? a regional agency?

Mr. Finan: It's the nature of the beast, for one thing. For example, we've got two bridges in our community that are listed critical for 2 years which means that a good sized truck goes over them and boom. O.K., you go to the state and you say those bridges have to be fixed. And they say I'm sorry all the money for the last 2 years went to the Kings Island Project...so you see this is one complaint that we have. Where are the priorities drawn, anyway? Unfortunately, we have no say-so. Obviously if they had sufficient money to take care of that project and to handle our project they would probably do both.

Mrs. Orfirer: Of course, when you're talking about district 8 you're not really talking about regional government. You're talking about an arm of the state government which may be a different thing and I wonder if you had any experiences with what might be a really regional kind of govt? Or service performed on a county level?

Mr. Finan: The Metropolitan Sewer District, frankly, has functioned very very well. The MSD was partly you may join and partly you shall join. You had 2 ordinances. One of them said that you may join and receive the services from the other one said you shall pay. So it kind of came to the point if you're gonna pay you might as well get the services. They said we'll be very happy to leave you with your sewers, but on the other hand you're gonna pay. And they have bent over backward to be of service to the community.

Mr. Vogt: I'd like to comment on regional government manifested in this regional planning aspect, in the OKI structure, on A95 reviews. There is no evaluation on priorities on A95 reviews, reports that are completed are accepted and therefore the dollars are already expended. There's always the question of more money but I think sometimes this question of more money has to do with bad planning, and if we are going to have a plan that identifies as for example one bil. 7 million dollars worth of highway facilities in this particular area as a need by 1990 and then proceed to try to implement that, I don't care how, we are never going to get at this question of how to develop the resources properly within the region. I think decentralization is equally important if not more important and has to, in many ways, come first. There are many communities scared to death of what is going to be the result of any type of centralized type of control. What is going to happen to them? If the city of Cincinnati could get its house in order with respect to its own neighborhoods then I think that the local outside communities would be in a much better position and would feel much more responsive to the idea of some larger unit of govt. The state is not responsive to local govt. The state somehow or other doesn't know whether or not it's supposed to be working for the region in which it is in or whether it is supposed to kind of carry on its own types of programs despite what the local community says.

Mr. Turner: I think implicit in any discussion of regionalization is the fact that the state must set up viable sub-state districts, for the conduct of its own affairs. This is essential to any kind of relationship between the state and local units of govt. I think that that's an important first step. The second step it seems to me you have to recognize the evolution of these regional functions like the Metropolitan Sewer District; like the need now for some transportation entity beyond the limits of Cincinnati and perhaps beyond the limits of Hamilton County. And that those things are going to occur at one time. My feeling about all this is that the recommendations we made in Michigan made sense in terms of this evolutionary process, allowing an identifiable regional group to develop concurrently with state decentralization on a district basis. We have to discover those functions which can best be provided on a regional basis. So the idea of the multi-purpose authority along with safeguards; there can't be a proliferation on district authority; along with guarantees that they will develop along lines that are still somewhat controlled by either local officials or existent state law or by the state legislature. The evolutionary approach is what I'm trying to say this morning has much more opportunity in gaining acceptance.

Mr. Finan: Another typical example to me was the Southwestern Ohio Regional Transit Authority decision to pass a bond levy throughout the county to purchase and improve the mass transit system. The next thing we knew was that there was an issue on the ballot, and the first thing that my community ever saw was a letter from the secretary of SORTA saying I'll be glad to come out and explain this to you.

Mrs. Hessler: SORTA was created by the county commissioners.

Mr. Finan: And it went down to resounding defeat, not in the City but in the county, and I still maintain that the levy could have been passed if the approach to SORTA in the beginning had been on a county-wide basis. But there was not an attempt to do this.

Mrs. Orfirer: It's very difficult to identify why certain levels or all levels of govt. are not functioning the way we would like them to. Certainly a large proportion of the problem is a financial one. There are problems with all forms of government and our job, all of us in the state, is to try to make them work better and if there are problems that are not capable of being solved in an area as large as the state or as small as the county or the municipality, then if there is to be some type of region, and as you say there's going to be some type of sub-districting of regional forms in this state, how to make them work best; how to make them most responsive to people and how to get them the funding that they're going to need to work well. One of the things that we have begun to talk about is the representation to such a region were one to be created.

Mr. Vogt: When you get large groups you don't get much done and when you have small groups you don't have very much representation. I am concerned about responsiveness and what happens to the smaller municipalities and what happens to the neighborhoods within the larger cities? I am in favor of getting us to some form of regional govt. at some particular time, but what happens when you have a regional govt. and its effect on those who are poor, and Black, as far as their power base is concerned, and how this particular agency or regional govt. can be responsive to what I think in Cincinnati is maybe somewhat unique as far as its identification of communities is concerned.

Mrs. Hessler: Should the regional govt. be controller and planner?

Mr. Vogt: All the brains that have to do with putting together a region do not lie in government. They lie in different places. I'm just concerned that we need ways that do

not let people say, "well it's so far away that I'm going to just go play golf." We're really trying to bring more people into govt. because I've seen small communities and I know how these small communities work. There is so much volunteerism to make that community better that is created because of geeling to be a part of that particular structure. Now if it disappears, there is never going to be enough money anywhere to do community development.

Mrs. Orfirer: I don't think that we can expect every level of govt. to answer all needs. I don't expect a region to provide neighborhood needs. It isn't created for that purpose. Municipalities, towns, and villages should be responsive to these kinds of needs. You have to make very clear what the purpose of the region is and what kinds of needs and services it's there for. How do we insure minority representation in this kind of regional govt., whatever that minority consists of?

Mr. Vogt: Let me try to answer that. You want something done and you try to decide who you're going to see. You end up with no knowing whether you're going to go see the county, the region, or who, because it's not clear where the dividing lines between these response are going to be, and this gets back to the question of original level of government. Right now you start just as high as you possibly can, and then you work yourself on back down and hope that you'll be able to fund some way of solving your problem.

Mrs. Hessler: Do you think it can be clear without some ombudsman type of arrangement? If you have a garbage collection problem this is a local problem. This is a problem when right tomorrow you want your garbage picked up. But if you're going to get rid of what the garbage man picks up, that's a regional problem. I mean it's the same function, but how can you make it clear to everybody who is responsible for what?

Mr. Vogt: One way is for the various structures who are involved to know themselves.

Mr. Finan: We have a pretty good sized chunk of land in our village that belongs to the City of Cincinnati and we've had one other occasion recently to be involved with the City of Cincinnati to find out who is responsible for talking about that thing. One facility is run by the police department. We called the p.d. because there was a problem there. "No, I'm not the one to talk to, you've got to talk to this guy." And pretty soon we've given up in many instances and said the heck with it...

Mr. Vogt: I'd kind of like to identify a little difference that I see between the regionalism of air pollution and the regionalism of transportation. I think the regionalism of transportation is more like the regionalism of such things as solid waste disposal. Because there is a local component that has to do with the whole question of patronage and success of this particular transit system that is involved where the community, that smaller entity, can actually do something. I think with air pollution it's almost impossible for that small community to do anything so I believe that the regionalism we're talking about there is more like solid waste than it is like air pollution.

Mr. Finan: Mass transit is vital to my community. Of the 2,000 people that live there, probably not 1% ever ride a bus, but the 25,000 people who work there --substantial numbers of them get to work by use of Cincinnati transit. Now, what are they saying; they're calling on our office. They say, "We understand if this levy passes mass transit

will stop at the end of the City of Cincinnati. How do we get from the end of Cincinnati to Evendale to work?" I don't know this. Just the other day I heard for the first time someone said to me, "No, it's not going to stop; we're going to continue service." But people don't know this so we say to the people, we'll form our own mass transit if that's what it's going to take."

Mrs. Hessler: County commissioners and the way they are elected and so on has created a non-representative body. On the other hand, the idea of electing city council who then decide which county services are adequate to serve their needs, but they make the decision, is in a way giving the local govts. that power of determination. I wonder if this is an answer?

Mr. Turner: You have to have the basis. In L.A., there are large amounts of unincorporated areas that required them to set up basic type services and because they had these services...they could contract with the basic units of government as they were formed. When you're talking about regional agencies they would have to start out pretty much with a framework or a skeleton of that kind of services.

Mrs. Orfirer: We would like to get your ideas on financing.

Mr. Turner: We need to look at the availability of resources, It seems to me that some system of state revenue should be used in the developing of any kind of region. You might talk about function diversion such as the gas tax for transportation purposes. It seems to me with general support for the development of any kind of regional agency the only solution that I see at this point in time given the kinds of taxing and resources available at either the state or the local level, would be a state-shared revenue approach. The day of the property tax as a major source of revenue is over. And as it has been over for states now for these many years.

Mrs. Orfirer: I'd like to ask Mr. Turner if you see as the immediate source of finance, the early source of finance state-shared funds, what you envision as the long-term best answer?

Mr. Turner: Well, I think we need major reform in financing local government and state govt. A major redistribution of the kinds of taxation ability allocated to each, and this means that local govt. to some extent may have to give up some of its sources of revenue or may have to add other sources of revenue depending on the total picture. From the federal govt. to the state to the local units of govt. we are faced with an absolute necessity of tax reform. So it's hard to say the best ways in which we could finance our schools, our cities, our counties, our regions, and our states.

Mr. Finan: When you boil it down, you really have only two alternatives: money either has to come directly from the state or you have to give to this new level of govt. the ability to tax in some manner. Now from the standpoint of the ability to tax I think you've probably run into the practical method considerable opposition from that side of the coin from people who are in effect going to get another tax directly upon them. Probably the only one that they would accept would be if the state were funding. Which obviously means that some other fund has to take the cut.

Mrs. Orfirer: I think we ought to keep in mind that there are certain kinds of sources that will be available. Hopefully, the federal money that comes into the agencies that now exist for planning and development could go into this larger pot or into this kind of region. User fees, for example, as and if some services in some regions are taken



over, or the money that local govts. would have been spending if they were doing this particular function that they now agree to have the larger area take over.

Mr. Finan: This is basically the system of the Metropolitan Sewer District.

Mr. Vogt: 'Wouldn't you think that you'd add a third possibility; it might not be a desirable one, but certainly the manner in which OKI as an example has been funded by the various counties contributing would be a third possibility, Let's assume that you did end up with a significant number of counties becoming viable governmental units, and that your regional group was primarily interested on planning, regional planning aspects, you could conceivably have funding up from the county govts. from their own resources up from their top level--the regional planning group.

Mr. Vogt: Unless there are new sources of taxation provided for, it would be a redistribution of existing sources. On the matter of the ten mill limitation, your original question was what the reaction would be to giving the region a share of the limitation or increasing the limitation. These are of course two different things. Giving a region a share of the ten-mill limitation would be in effect a sort of enforced contribution from existing local governments to the region rather than a new tax. The new tax would obviously not be popular with anyone because no new taxes are ven though they may be felt to be needed. On the other hand, I'm sure that existing units of local govt. would not be very happy unless they were sure they were going to get a commensurate benefit. But in Ohio the customary method up until now of giving a unit of government independent taxing power has been through voter approval in addition to the 10 mills.

Mr. Finan: Funding has worked on a voluntary basis to an extent in the inter-community air pollution control council where its voluntary and each community does pay so much based upon a head tax more or less, based upon its population.

Mrs. Hessler: Only 7 out of the 39 pay.

Mr. Finan: The 7 out of 39 are really the only ones that have contact with it. Because the approach has been to cover the Mill Creek Valley, more or less. Every community does belong and every community does pay. And some communities could drop out because we could get the same services supposedly free through the SouthWestern Ohio Air Pollution Control Commission.

Mr. Turner: I would point out one thing about the whole concept of minority group representation. Correctly or not the black populations in central cities feel that they have potential political power and that there is a conspiracy now to spread that power base across the region and I have been confronted with that attitude for the last 4 years and I will suggest to you that most of the opposition to regional forms of government are not necessarily or is not in emotional terms or emphatic terms come where you would expect it to come from, the separatists. It is coming from the central city and the ghetto areas. And for some very valid reasons. I'm sure Mr. Westmoreland will let you know all about it this afternoon.

Mrs. Orfirer: If we move with this, we must do a tremendous educational job in terms of what the regions perform and how they affect the smaller units of local govt. and that the smaller units that are going to retain their power base in whatever kinds of regional powers are set up...

Mr. Vogt: When you can define what is going to happen in the smaller units of govt., whether it be a suburban, city, village, or communities within the big city, or whatever it may be, the solution in many ways is going to be common for them, and I think that at that time they're going to be able to look more clearly through all this maze we've got into the area of regional govt.

Mrs. Hessler: Except that it's going to be very difficult for the suburban communities to see the black demands in the central city as something that they can come together with.

Mr. Vogt: I'm not only talking about black demands--we're talking about the community--black, white, Price Hill, Kennedy Heights, Avondale, and so forth. It's all of those things.

Mrs. Hessler: This is visible right now in our city council.

Mr. Pistler: You have to get across the idea that the concept of regional government or strong county government doesn't necessarily mean that you're going to take power away from small local units. Those governments should limit themselves to the very services that have to be close to people. Well, once you start with that as your premise, that you're not really trying to take away functions that relate to people where people want a direct voice, say, in a fire dept. or a police dept. or a zoning matter that affects them directly or a school, you may want to have a community govt. And then you go to the second level having a unit that can effectively handle such services as sewers, and water, etc. You've got to have a second tier--such as the county--to effectively do that function and then if you've said all right the services we're really talking about in the region are those services that the local community can't provide that have to be done on a wide basis such as air pollution and such as planning which doesn't confine itself to a community unit.

Mrs. Hessler: But you brought up one point that was very important from what Mayor Finan said, and I'd like to hear from Mr. Vogt and Mr. Pistler who are both interested in land use planning and development. Certainly the major reason why we need regional government is because we need to control development. If you need to control development you also need to control certain functions. You can't just make a plan, you have to be in a position to control development that goes beyond simply where the highways go and other services. And that brings up zoning. Every local govt. says you cannot interfere with our zoning; and if you can't, you cannot control regional housing programs and you can't control regional development. What have you done with the whole regional land use program that is concerned with the American Institute of Architects?

Mr. Pistler: We're trying to deal with development, on a much larger scale...not just talking about housing, but talking about communities, houses, schools, shopping, churches, recreation. All the things that make a community, not just units. When you talk about neighborhood scale development this is going to have impact wherever the problems, whether you're talking about filling in spaces within the developed city that have somehow been passed over or whether you're talking about clearing and rebuilding or whether you're talking about big impact, which is precisely what we need and has to be built. It can't happen everywhere indiscriminately, it must be done on the basis of some predetermined policy. We can have that policy. It has to be policy on a very large scale. It can't be the policy that's decided by Evendale and Walnut Hills, even

the City of Cincinnati. I don't think we're ever going to have good cities and good communities until we confront that issue.

Mr. Vogt: Everybody solves problems within the framework of the rules that are established. Businesses, government, or whoever. And I think you just have to set up some different rules for cooperation. If you're going to come up with an area-wide plan that talks about low income housing then I would suggest that you tie some of the dollar things to that. The power to issue revenue bonds in order for a community to help to redevelop itself--it seems to me that the city's position on this or the larger county's position may be in many ways determined by the directions that the local community is willing to take. I'm in favor of putting a lot of responsibility in the local community and I feel that that responsibility and the dollars should be tied together.

Mrs. Hessler: You don't have a viable govt. over many of these areas.

Mr. Vogt: I'd like to see, in that particular regard, the annexation laws loosened up. I think Warren County is one example. The Warren County I-71 corridor has got a tremendous future potential if done right. The large land owners don't want to be a part of the municipalities unless they can figure out what types of returns they're going to get and right at the present time they don't see that return. The whole development has to do with roadside development, roadside commercial development, and it makes no attempt to the present time to build a community and yet there is, I think, within some of those existing small areas--Lebanon, for example--a good small municipal government that could handle it if it had the powers of annexation...

Mr. Pistler: We haven't talked very specifically about the extent of local government's role. Nelson mentioned the idea of service functions and things that are related and limited to what goes on within the community. What about the problems that relate to the larger community where this suburb's interest and that suburb's interest conflict? There has to be some court of higher...that you go to to solve those things. This is where there needs to be much stronger planning, much more policy making than there is today. And inevitably there are going to be some unpleasant consequences for everybody in doing that, because what's good for all may not be, in the eyes of some, just what they would like to have. You can't pick any hotter potato than housing where if you begin to talk in terms of a fair distribution of housing, you're going to come right up against that. I don't think there is too much opposition to uniform regional building codes, uniform regional minimum zoning requirements, on other words in no acre shall you have more than so many units. Where you get into difficulty, if you've got a region or a community that wants to impose upon itself more restrictive zoning, if you could render your regional authority to grant permission to local units to impose more restrictive zoning you of course remove all the heat and furor. And most if people talking about it think well, what I'm really talking about is being sure that we have adequate building codes, that we have adequate supervision, that we have quality buildings being built, that we don't have too much density in an area, they're thinking of it in terms of the restrictive zoning where you're going to assure that you're going to have good buildings, not massive density, and yet that is really the argument that the suburban groups are concerned about.



## AFTERNOON

Mrs. Orfirer: We have spent this morning discussing what we conceive of as the role of these regions and we have made the point that the region is to provide a function that is not served by any of the lower levels of government, smaller units of government. That it would not in any way call for the dissolution of any other unit of government or take away from the smaller unit of government those functions that could best be accomplished at a local or city level. But that it is meant to help in the solution of those problems that the city or those other units have not so far been able to cope with. Problems that are of a regional nature, primarily such things as transportation, water pollution, air pollution, sewage disposal, the type of thing that we all agree is a regional type of problem. These regions would be set up with powers of planning and review. That any powers beyond that would be done region by region as a demonstrated need, the region is convinced of it. That it would be done for those functions that we have enumerated that are needed in that particular region so that there would be a great deal of autonomy within the separate region. All the regions as we see it at the moment would not have the same powers. They would have the capability of it, but they would not assume them, providing that there is a substance of powers beyond that of planning and review that would be gradual and would be within that particular region...and would be subject to a referendum of the people and a veto of the general assembly. We want to retain the powers, the checks and balances system as thoroughly as we can. We've come to no final determination on any of this, but we've certainly come to an even initial agreement as to types of representation. We were discussing elected representatives from sub-districts within the region, perhaps some by district and some at large, these are some of the possibilities that we have talked about. We are very concerned that all groups be certain of having the types of representation that are possible within a regional framework. Now obviously the important thing to keep in mind is that certain functions will be retained within the smaller community; they have nothing to do with a large region, and so the people will have a direct impact on those functions which have a direct impact on them. They will, I think, inevitably lose a direct impact on the larger widespread functions that affect the whole region rather than the smaller units within. We also noted the need for more viable local control of the local services and breaking down the central cities into community councils for certain types of services. Remember, this is not a constitutional matter; it is not something that we do not have the power to do now if cities choose to do this.

Mr. Westmoreland: Are you saying that if the City Council of Cincinnati so desires they can divide the city into smaller sub-suburban areas and recognize existing or future sub-groups that would represent those areas?

Mrs. Hessler: They have that power under Home Rule of the City Charter.

Mrs. Orfirer: They can't turn any money over to them, though, can they?

Mrs. Hessler: They can turn control of money. For example, they could insist that there must be a viable community council or something like this. For each community there will be a certain amount of new funds that are discretionary. You have that power through your community council to decide what you want for that money.

Mr. Westmoreland: My past experience has been two-fold, in terms of being exposed to governments other than local governments. As I said Friday, and some of you were present, I grew up in Lincoln Heights and I'm sure now that almost anyone in the state

knows that Lincoln Heights is an all-black city. And I doubt that anyone understands why Lincoln Heights became Lincoln Heights. Lincoln Heights existed here in Hamilton County and that was just about it. I lived on one of the two paved streets in the community. We had absolutely no street lights, and I can recall a gentleman in our community as being hit by an automobile on Friday evening and it was Tuesday morning before the county morgue sent somebody to get him. It was with that kind of a background that the people in Lincoln Heights incorporated the city and in the process of attempting to incorporate the city they were gerrymandered by the Hamilton County Commissioners out of the land that they had been living on, for years. Evendale, Woodlawn, they were Lincoln Heights. There building 700 is at GE right now there are houses on Second Street in Lincoln Heights that were moved across the canal by the Davis Moving Company which started on Marion Road and Davis made so much money moving black families across the canal for the Wright Aeronautical Corp...so that was my first experience with a large, unresponsive governmental body. The only time we ever saw the County Commissioners was when they would be Democrats who would be attempting to get elected, and they would come to LH knowing that an appearance there would guarantee about 99% of the votes there. As an adult I've lived in the City of Cincinnati and I've lived and worked in the inner city. And again I find myself and I find my neighbors in a position of not receiving the kinds of services that most of the citizens in the urban environment take for granted. Basically, we're fighting City Hall and the Hamilton County Commissioners' Office. The state government, we really don't know what that is. I happen to know what it is because I was a history student. I guess most of my life has been spent being curious about what it was that controlled me. But basically we have no contact with the state government. Living in the kind of community we live in, the kind of density we have, the kinds of problems we have, basically understanding that the ghettos in America are going to continue to exist. We think that we have a unique need that only those of us who live in these kinds of communities can really respond to. Change must come from within. But one of the things we need is resources and technical expertise. And the resources quite often are manipulated from without and so is the technical expertise. And I'm going into all that to give you my reaction to regionalism. Our first and most negative experience with regionalism has been with OKI, and I must put that in the proper context. As you will recall I said something about the local government not being at all responsive to the kind of community in which I live. Here in Cincinnati you probably have some of the most clearly defined neighborhoods than anywhere in the United States, due to topography, due to the patterns of migration that have come into the city. You have very distinct, very definable neighborhoods and the people don't identify as Cincinnati but the people identify as a person who lives in X neighborhood or community within the city of Cincinnati. And this is very important if you've been thinking of any kind of change in Cincinnati, and I want you to know that. As a city moves from being a walking city and being clustered here in the basins, and as the black population of the city grew, the black population basically stayed in the Western end of the city; the highway scattered us. But this was done in a planned way, and the relocation dept. of the city moved the black people into two or three neighborhoods. One is the Over the Rhine which has been predominately Appalachian neighborhood, the other was Mt. Auburn which had been a middle income, white. Eight years ago 70% of the people who lived in Mt. Auburn were white--now it's reversed. It's 70% black. And Avondale was another example. And this set of the typical repercussion that had occurred in urban America where you have a wave effect, 15 or 16 miles North of where we're sitting right now where the friction really has yet to be resolved. Prior to black people really moving into Mt. Auburn for whatever reason the local government just began to neglect this neighborhood. This was the finest neighborhood in the City of Cincinnati. The other day I gave an historical litany on the historical personages

who had lived in that neighborhood, and it reads like the 'Who's Who in America, from President Taft, to Mr. Pendleton who wrote the United States Civil Service Law, Gov. Crox, the Shillites family which is now part of the Lazarus of Federated Department Store Chain, you can go on and on talking about the kind of community that Mt. Auburn was once. But for whatever reason, the local government allowed it to deteriorate, and when we, the black people, began to predominate in Mt. Auburn, we began trying to identify what the problems were. The first things that we identified--services from the city and the deteriorated housing. We found that 80% of the housing is owned by people who live outside of the area. The population of Mt. Auburn at that time was 20,000 people, the community began to establish a priority, the renovation of some of the most attractive housing in the country, And to date they have complete \$4 million, and of this morning, they submitted a package to the local banks for another \$2 million. So this has been done by the people who live there. In the mean time, the city govt. has made very limited improvements affecting street lighting, no improvements in police protection, no improvements in parking; we have hundred year old streets that are 10 feet wide. And we've had requests for four years to deal with this thing. Well, while we were wrestling with City Hall trying to get some of these inequities rectified, and while we were spending our \$4 million that will be debts to us until most of us are old men, the OKI decided that they needed a link between I-75 which is on the west side of town and I-71 which is on the east side of town to connect the eastern and the western suburbs and evidently to permit the traffic to flow. And as you would have it, it appears that they're going to bring the highway through Mt. Auburn, through the Over the Rhine, and through the West End. The three neighborhoods together have done \$12 million worth of rehabilitation, that they have done, and that their corporations own. This is a very responsible response in our opinion to the reaction that most people have about why don't you people do something for yourselves. Well, that's our first negative encounter with regionalism. We're being told that it's for the benefit of the people in the region and for the expeditious flow of traffic that this highway, the ghetto expressway as we look at it, comes through our neighborhood. Our reaction is "To hell with where you have to go." We have no sense of regionalism; we are opposed to it. We're willing to improve our neighborhoods to fit our lifestyles and since we're not really a portion of the regions, we can't live in the suburbs or work in the suburbs or participate fully in what goes on in regions, we are basically opposed to regional govt. Our reaction would be that you decentralize the existing govt. even more, and on a population basis, or on a per capita basis, distribute the resources that are available to the governmental units in this area. In our schools we would look for the same allocation for our students that occurs in the textbooks, classrooms, etc. in the suburban communities. What do I mean by that? Mt. Auburn is served by two high schools--Taft which is named after the President and Hughes HS which borders on the campus of the University of Cincinnati. Hughes HS sits on 3 acres of ground, Taft sits on 5. The State of Ohio says to have a high school you should have 50 acres of ground. We would say to the state board of education, why don't you come up with the money to give us the extra acreage so that our kids can find out what running around and just having fun can do for them, rather than hanging around the street corners. We don't feel that there was an equitable distribution of the resources in comparison to what the need was according to when these schools were built. Taft is only about 10 years old; Hughes is very, very old--I guess it's 60 or 70 years old. We don't need to go to a regional high school, a central high school or whatever. America's against busing, and I guess we are too, at this point. Not because maybe that wouldn't be a good thing, but because there is no reason for us to have to be bussed somewhere and then have to fight after we get there. It's the same with the other regional scheme. We honestly don't feel they involve us. The highways, the transportation system, are built to serve

somebody else. The ownership of automobiles in our community is very low compared to the 2-car families of the suburbs. We're not going to use those expressways, because we don't care about where those people in the suburbs have to go; it doesn't matter. So in general, and in a very specific way, we would be very much opposed at this time to regionalism, because we see it as a very negative factor in terms of where we are. Academically I could probably justify it. But being who I am and where I am and fitting into America the way I do, I am very much opposed to it and I think my neighbors would be also.

Mrs. Hessler: Jobs are proliferating outside the city whereas they are not within the city and are not likely to. How does that relate to a community like Mt. Auburn?

Mr. Westmoreland: Well, our unemployment rates for males between the ages of 18 and 25 is 30%. And people wonder why when they come to the neighborhoods they have to lock their car doors; I do. And there isn't a young man within the neighborhood who doesn't know me. And they also know that I never have more than \$5 in my pocket. I've said it so much publically, they know that. But that's one of the immediate factors. The growing industrial development in suburban areas is such that the opportunities that exist there--it's almost frustrating. I was in the Tri-County area last week just riding around driving in my car and I saw signs on gates "Help Wanted" and the kids don't have a way of getting out there. Our men don't have a way of getting out there,

Mr. Kramer: Mr. Westmoreland, wouldn't that be an area in which transportation would be important for your community?

Mr. Westmoreland: As the transportation has now been planned it still would not involve us. You see, they're talking about transportation systems that still have no benefit for us,...well, that highway is an example, but...

Mrs. Orfirer: What about mass transit?

Mr. Westmoreland: In Cincinnati and Hamilton County that's like talking about going to the moon. We've attempted to participate in the OKI planning process but we've been successfully gerrymandered out, even though most of the transportation planning impact is going to land right on us, the topography, etc., In the Cincinnati Metropolitan Area it means that just about anything you're going to do is going to come back into the basin. We have one man on one of the OKI communities...and Appalachian from Over the Rhine and that's it. That again indicates to us that the larger the govt. unit becomes, the less impact we have on it. And the more justification people have for our not participating. They'll say well, look, the region has to be adequately represented in all areas and you will get one representative; but then the guy from Mt. Washington, the people from Westwood and the people from Glendale or wherever all have the same attitude and there sit out one appalachian, and maybe our one black man. Because they all want to use the expressway system and you have two of us who want to get our kids out of the Mill Creek Industrial Valley, or in the evergrowing industrial complex that I see now going on in Northern Kentucky. There's no way you can get across that bridge right now unless you are in an automobile. If you try walking across that bridge you'll get run over and if you swim across you're going to get busted by the man as soon as you clear the water. So the planning and implementation of plans that have occurred thus far has completely ignored the fact that we exist.

Mr. Anderegg: What do you foresee as the future of your community? Because whatever you do in your community there are going to be mass transportation systems planned, there are going to be highways built, water systems built. How does your community fit into all of this?

Mr. Westmoreland: At this point we see ourselves turning in and doing as much for ourselves as we can in the community. Tryin<sub>g</sub> to draw from the outside and equitable share of the resources.

Mr. Vogt: Now you've got to try to compete with the entire region with respect to that plan.

Mrs. Hessler: Because there isn't control in the local community with what goes into that community or has impact on it.

Mr. Westmoreland: We probably make more use of the courts and systems such as the courts and what we call the establishment. If they think they're going to build that highway, they will after we go to court and other things. It will be a long time before somebody rides over Over the Rhine or Mt. Auburn at 60 miles an hour. And maybe in the interim they'll decide that it's cheaper to do something else.

Mrs. Hessler: What do you see as the solution to this particular problem of getting your people to places where there are jobs? Is there any way to get across the river?

Mr. Westmoreland: The only tool we have now is to block somebody else's progress. Stop what they want and at that point suddenly they begin to develop some virtue. They begin to recognize you and respect you as a human being.

Mr. Anderegg: That still hasn't answered the question. You talk about turning inward on your community. If your community can't provide jobs for your people and the jobs are elsewhere, how are you going to get your people to the jobs?

Mrs. Orfirer: This is something that goes on all over the state. I come from Cleveland and we have just gone through the same thing with them trying to run a highway through Shaker Heights and several of these communities; and it's one hell of a long, tough battle, to stop some of these people and I'm very aware of what your problem is and I think it affects all groups, not just black people, and not just poor people, although they may have fewer resources to fight it with. I think we're all in this together, and we're going to have to find some solution that works for everybody.

Mr. Westmoreland: We will continue to provide for ourselves as best we can, until other people understand that it affects them also. Right now we deal with the pushers and the junkies as best we can; we call the man when he'll come and some of us have begun to revert to vigilante action. Sooner or later, the total community which has allowed narcotics to come into our community and turned its back and laughed will say, "It's costing us money too and we're going to take narcotics out." Sooner or later the savings and loans, the banks, and everybody else will get tired of these junkies coming into their stores, sticking guns in their faces, or creating problems and being a nuisance in general, or overpopulating the Ohio prisons and decide, well, if we're going to spend that much money to keep them locked up, we could see to it that they got to work for a change. Regionalism or any other kind of "ism" or any other kind of government has to sort of open its eyes, and determine what real costs are, and in our opinion, at this



point, we're not going on any more crusades. We'd better spend our time at home; we have to .

Mr. Underegg: Social problems aren't necessarily related to the structure of government; no matter what the structure of government is, you've got to make people realize what your problems are. And it doesn't matter whether it's on a city level or a county level or a regional level; it's whoever has the power to help do what is necessary.

Mr. Westmoreland: The further away it gets from where we are, the less responsive it becomes. And a regional government would only create another level. And would be one more obstacle. I'm a professional at dealing with federal agencies, that's how I earn my living and that's also how we've been able to get things going in our neighborhood. The usual step on dealing with OEO or HUD grants is to start in a local office and then go to Chicago...and then you go to Washington. Then along came another confusion that set us back six months--they opened an office in Columbus. Now you talk about run-arounds. And that office was designed to bring services more quickly to us. I know that I'm speaking for most black people; the only form of government that I begin to trust is the federal govt., as far as it being responsive at all, and it doesn't matter much who the President is. We've gotten just as much out of the Nixon administration as we had out of the Kennedy administration; when we dealt directly with the federal govt. Whenever we get through the door, now that's the secret, once we get there we don't get the run-around. You go in, you make a good presentation, you have a decent case, then you come back with some money in your pocket and some resources to do whatever it is you are going to do.

Mrs. Orfirer: Going back to Mr. Westmoreland's point about the federal govt., maybe you can go to the federal govt. because that's where the money is; is that right?

Mr. Westmoreland: It's not only where the money is, but for whatever the reason they've become removed from direct political influence. In other words, they don't have a constituency, to which to answer. For example, we went to City Hall, and we've been going for almost two years looking for twice weekly garbage collection for the inner city neighborhoods. Our density in the Over the Rhine is higher than that of Harlem. Now the political excuse that the City Council and the City Manager have given us is that if we give you people "twice-weekly garbage collection the suburbanites will have a fit." Our answer to that is that the suburbanites don't have the rats, they don't have the density we have and they have better methods of keeping their garbage. But their answer was not to the merits of whether or not we needed it, and not to the merits of the kinds of improvements we've made in our own community that in our opinion warranted some extra service from the local government, but to the fact that politically it would cost them something. Now, we are writing a proposal to the federal government as a demonstration to get garbage collection in these three neighborhoods twice a week. The only thing the man is going to do is look to see: 1) if we're going to steal any of the money 2) whether or not we can really run it within these limits, and 3) also whether the thing makes any sense or not. But we can go to Gilligan or anybody else and we're not going to get it there.

Mrs. Orfirer: Mr. Westmoreland, I think you're making several very good points. I would just like to point out that the federal govt. is the largest area that we can talk about. So we sometimes move from being effective at the neighborhood level. and sometimes at the federal level, but it's not always a function of the geographic area. Now I don't know exactly what it is a function of, whether it's financing or whether it's the



structure of the government, but how can we say regionalism is no good because it covers too big of an area?

Mr. Westmoreland: But I think even a regionally appointed board would still be subject to local politics. Here in Hamilton County if you belong to a certain political party you are assured of life-long office. So you should be able to be very effective, but it just doesn't happen. And I'm sure in Cuyahoga County it's the other way around, in Cleveland it's the other way around.

Mrs. Hessler: May I ask you a question. I'm still trying to get at this question that Mrs. Orfirer posed which is the fight over responsiveness of govt. Is the federal govt. responsive because it has determined on a policy of sharing funds and because the local community has the power under the federal policy of going directly to the federal government, having determined what was good for their community? Should there be a veto of participation by communities as they are affected by a policy whether it's by city policy or by county policy or a regional policy or a federal policy?

Mr. Westmoreland: Yes, that's one of the other aces in the hold that we have with the cross country of the ghetto expressways and that is we talked directly with Mr. Volpe and he has assured us that if they can't tell us where the 4,000 families are going that are going to come out of there--if they can't come up with replacement housing that is better than the housing that the folk are in now--then they got problems.

Mr. Vogt: That's a standard federal requirement of all relocation, is it not?

Mr. Westmoreland: If you can get to them.

Mr. Pistler: But it's a matter of whether the federal government is going to enforce this policy.

Mr. Westmoreland: No, it's a matter of whether or not anyone ever raises a question of whether this plan is legitimate or not.

Mr. Anderegg: There has been failure on the part of the federal government to enforce relocation provisions that resulted in the conditions that we have...where did all the people go? They can't even be traced anymore. But again it's the willingness of the people in responsibility to carry it out, very often, whatever the structure of government is. Maybe one thing your community really needs is more police.

Mr. Westmoreland: Yes, more police, and more jobs.

Mr. Anderegg: Well, the police which is a community function, a traditional community function, however you want to define community. What you'd like to have is a reallocation of resources. Now are you saying that you would like the City of Cincinnati to provide you with more black policemen, or would you like to have the money so that Mt. Auburn could provide a certain type of police service for itself. If so, how do you think that money could be allocated to your community?

Mr. Westmoreland: If we were going to do that type of thing, I think what we should do is establish our own court, and let them set up our own safety department and the whole bit. If we could operate within the City of Cincinnati then I think the City of Cincinnati should be willing to respond to the kind of direction that we establish for

our community, if that makes any kind of sense at all. There would be X number of dollars allocated for police service, fire service, and other public types of services and then we define how we want it delivered. Okay? And if that says we want an all black police force it is up to Mr. Turner and the Safety Director to get out and get it into the community. They're professionals at doing it and they can do it if they want to. The point is that we want them to respond to the kind of direction we have. Now it's done in other communities--you couldn't put a fence in front of our yard, unless you went down to City Hall and had a public hearing, right? Now in Cincinnati the man says it's "unconstitutional." Because we try to deal with that kind of thing in our neighborhood, as to how people's homes look. We want you to make everybody in that neighborhood paint, and we don't want raggedy fences and we don't want junk in our front yards. We've got some Jesus freaks on Macgregor Street who are parking buses in the front yard of a mansion, a historical mansion. We want the City Council to outlaw that. But the way it's set up now they won't respond to the direction that the community wants to establish for itself. Now the people in Wyoming all kind of go along with that kind of ordinance whether it's constitutional or not.

Mr. Anderegg: Let me ask a question, because as you know I'm a structure man. One of the things that we somehow have to face up to is the assignment of decision-making powers to the local government...truly representative. You're saying we want the city to do thus and so. And I have to come back to the community, by what authority for that community do you speak? What are the credentials that enable you to be truly representative?

Mr. Westmoreland: That's a good question and I'll answer it. (1) we're incorporated under the state laws of Ohio...the Mt. Auburn Community Council...within the constitution we have established geographic limitations as to what we have defined as being the community. (2) we have within our Constitution, within our code of regulations, a specific time calling for an election; the entire population within the community can vote for community council members and board of trustees. That means children, adults, anybody can vote. Our elections are held openly, etc. And we've been able to stand the test. But your question is very real and I'm willing to address it.

Mr. Anderegg: I believe in representative democracy and there are certain ground rules set up of how you go about getting to represent people. We need to take that big city and bring some of the decisions back to smaller levels, than a 500,000 population level. These are the decisions that ought to be made by the Mt. Auburn Community Council, assuming that they're duly constituted in a uniform way with all the rest of the municipalities to speak responsibly and be representative. There are some other things. Planning is one; air pollution control and of course some other ones that even the county is not big enough to handle. We're forced into planning by federal directives. There are things that have to be done on a regional level...

Mr. Westmoreland: We see that the existing systems of government need to function before we can talk about other systems.

Mrs. Orfirer: Maybe they can't. Maybe there are problems that existing levels cannot handle and cannot be expected to handle. In other words there are problems in your area that you should have the power to handle. I agree with you 100%. I believe that neighborhoods have certain rights that they should be permitted to handle and certain responsibilities for certain functions. But there are other things that they cannot be expected to handle and they can't do a good job of handling.

Mr. Anderegg: You come in with a request for a program that you want done; now theoretically, elected representatives...make decisions for the best of everybody and they listen to that request and the contents and they say that they can't do it. And you accept the fact that that might be the best decision that that man can make, the proper decision...try and evaluate your standpoint from the overall for the good of the people for which you are a part.

Mr. Westmoreland: You missed something that I said originally and I'd better repeat it; we have no concern for the good of the overall region, because we don't consider ourselves a part of it.

The V.P. of the First National Bank turned down a loan we were in for yesterday. He said we turned it down for one, two, three, and you come back with those three answers and you'll get your money. This is to do a shopping center. So the people are out on the street digging up, along with the city planning commission...we're getting statistics we need. And I can deal with that...but don't look at us and say politically it's going to cause some problems. White people in some neighborhoods are saying you're getting too much already or I can't do it everywhere, so I can't do it for you. But you see the needs aren't the same everywhere.

Mrs. Orfirer: The proposal that we're dealing with has to do with the kind of region that would satisfy general requirements for planning and review in connection with getting federal money. Do you see any advantage to formalizing planning these and review regions in order to get federal money? Would this help you in that respect at all?

Mr. Westmoreland: I question it, and I question it because we had more success in getting funds from people who didn't know us than we did from people who knew us. I'm talking about that didn't know us personally, that had no particular axe to grind and no political liabilities. I've got a feeling you're doing something in regional or closer to home it's going to get right back in to some of the political pressures. Now I think communities like Middletown, some of the Ky. communities, some of the suburban politicians have an almost unimaginable amount of power in terms of OKI and I would not like to go before a board like that and try to talk about something that they are basically alienated towards. As it is now, they have a constituency to which to answer, and in terms of the redistribution of funds to urban communities. I'd just much rather have a pool of money in Washington and every ghetto in the United States being told there ain't enough to go around, those of you who come up with the best packets can get it.

Mrs. Hessler: What about the communities that don't have a president of the community council who can speak for them as you can? This is certainly true of Over the Rhine, but it's certainly true of many of the communities that have never developed that kind of leadership.

Mr. Westmoreland: The people that live in Over the Rhine are Appalachia or black people; ordinarily they have had no experience with govt. The West End is proficient in running their neighborhood because their community council is 100 years old. The people in Over the Rhine have made their needs known, even though it's not been articulated in terms of what you and I are accustomed to listening to or want to listen to, the presentations have been clear--it's been very clear and it's not that limitation.

Mrs. Orfirer: Mr. Anderegg, I wonder if you have any particular aspect of this that you'd like to see us get into, while you're with us.

Mr. Anderegg: I would reemphasize my extreme concern that we structure this involve<sup>ment</sup>ment. I believe in it and am a strong supporter of it; we've got to have more and more people involved in the governmental process.

Mrs. Hessler: Are the commissioners that hired you conscious of this? Or responsive to it?

Mr. Anderegg: I am a practitioner in the field of local govt. and I see the shortcomings of local govt. as well as anybody else. Our political system is the best thing that anybody's come up with and to circumvent it, which is what I see happening, to circumvent it by building self-appointed structures, as necessary as it has been because the system has not worked...My answer is to go back and make the system work, and where the framework is bad to have a system that works change the framework, but get away from this self-appointive bit, of political involvement on the community level. But I suspect and I feel pretty confident, that if there were a duly held election in Mt. Auburn--of course your definition of what's Mt. Auburn--an election held under all the laws of the state, and I insist this is the only way to hold an election, Carl would be elected leader of the community. And if that were to occur, and if there were a structure there, permanently, political reality under the laws of this country, and if he were elected a leader, I would give him so much more credibility in terms of his speaking for that community. If he said "we want this" I'd say he has every right to say it. Right now I question that right. But I don't question the need for him to speak for that community or the need for that community to speak. I just want to see it structured, not by a group of people taking it upon themselves to constitute a group and have a spokesman.

Mr. Vogt: The planning commission has asked this group and that group and other groups to form themselves into community councils, and they will continue to do so and they will continue to be supported as semi-representative types of groups, and very semi in some instances.

Mrs. Hessler: How can regional govt. be structured in a way that would satisfy the demands of the local community, assuming you had a legal structure in the local community?

Mr. Anderegg: I'm not sure you would satisfy Carl Westmoreland with a regional structure anymore than I'm sure or not sure there's a way of structuring something we could be planning, for example, that would satisfy the state.

Mr. Anderegg: Citizen participation in the decision making process should not go around the public officials who are elected to make decisions.

Mr. Vogt: It isn't always Carl Westmoreland, maybe the head of the planning group from Mt. Auburn and maybe the head of the industrial development if that was going to be a part of it, or the housing group because then they've got credibility; it isn't only the individual who's got the credibility, it's the council itself that's got a credibility to all people who participate in it. And at that particular level, you are dealing in a kind of town meeting type of set-up that has a representative type of way in order to feed into the various other parts of the region.

Mrs. Hessler: We have the power at the city level to create such viable community governments...this isn't really our basic problem. Our basic problem is how can we make the regional government responsive to the other governments within the region? OKI is not responsive to the governments within the region whose large governments, like the city or the county, in turn are not responsive to the small groups within the city. Now as far as the regional government is concerned this is our constitutional problem; this is the problem we're facing now. OKI is dealing with the services that are local-regional or local-community for the most part, except of course for highways, and you've got to give the regional govt. some power for planning highways because they're regional and they do affect these local groups. How can we give our regional structure responsiveness?

Mr. Anderegg: I have the one concern that it would be another over-locking layer, and I have always wondered what it would be like to go back and redraw the county lines and instead of having 88 counties, have 13 or 14 or however many regions you would have and this sort of thing...

Mrs. Orfirer: I think we have reached the point where we understand that counties are here and they have to stay here. And so presumably we're going to recommend that it follow some sort of multi-county line.

Mr. Vogt: The state would create the thing and that it would be charged with the planning essentially...but that it would be a legitimate structure within which several other regional functions could be performed--How do you get within that structure the participation of the citizens?

Mr. Anderegg: One additional constitutional question I would call to your attention is whether there is any problem about the ability of the local and state governments to piggyback their income tax on top on the federal government's tax, especially the state government's ability to do that because of provisions in the state constitutions. I would also mention the problems of creating a regional government in an area such as ours where three states are involved.

Mrs. Hessler: I believe that if there were a regional government composing 4,5,6 counties in this area who were concerned with a metropolitan area across the river that if there were an agency in those communities on the Kentucky side it could contract with the agency on the Ohio side to provide planning services or any other kind of services they wanted.

Mr. Pistler: I am an architect and concerned primarily with the physical environment. I tend to look at regional government from the standpoint that we need better government not more government and so I have some concern about the whole question of adding another government. It's possible to anticipate that some governmental functions can be performed better at the regional level; that's pretty obvious. And it would only be necessary then to assure that functions not be duplicated. That's not so easy I am sure. I'd like to back up a little bit and talk about a problem at the state level. It has to do with policy in the future growth and development in this state in the very broadest sense of that term. Historically, I suppose that legislators and governors will presume that they have some sense of commitment along these lines which would guide their law making and administration on a day-to-day basis, but now and in the future I think that we can expect that the issues become so complex that an intuitive method of forming

policy just isn't possible. Research, analysis, identification of alternatives by skilled experts must inform the judgment of the legislators and governors. Progress on long-term projects of major significance must be evaluated and reassessed on a regular basis and such detached attention to the long range goals of the state and indeed of the whole nation is necessarily inconsistent with the limited tenure of elected officials. Others must therefore define the issues so that these officials can deal with them. The Governor's Housing Commission on which I serve has recognized this need and has prepared legislation to create a state growth and development policy board. That is this great big fat legislative report which I think you all know about. It's regarded as sufficiently controversial and was not introduced to the legislature at all and there is no prospect at this time that it will be. As that material circulates we keep getting more and more indication that it does indeed speak to a very great need, and one that is widely recognized. If it is in fact the right answer to the problem time will tell. If there is fair scrutiny and improvement there may be alternatives which are better, but the need for policy is there and the policy doesn't exist. The American Law Institute in its Model Land Development Code which is now 10 years in preparation has suggested that there be establishment of a long-range planning institute separate from the state planning agency which they also advocate. That's this little white book; I don't know if you know about this one, very similar in its approach. The AIA, American Institute of Architects, has named a national task force on urban growth policies to study and advocate on a national basis, and by derivation on a state basis the same idea. Until there is a well-defined growth and development policy on a statewide basis, the advantage of regional government will be significantly reduced. It will be a valuable new tool for governing but clearly defined projects on which to use it will be lacking. Even the geographic definitions of the regions requires prior policy making and planning. For example, shall the metropolitan corridor extending from Cincinnati through Hamilton, Middletown, and so on up to Dayton and Springfield be encouraged to develop as a continuous linear city along a transportation line or should selected city centers be identified and permanent open space established between them? There are serious arguments to be made for both approaches, but until that kind of question is resolved in terms of whole state interest there can't be a logical definition on the size and boundaries of regional government for this whole area. Well, this gets way beyond the county level, as you can see--multi-counties and we can't even say how many counties because we just don't know what we're talking about in terms of any broad kind of intention on the part of the state, or how the state will develop. Housing commission got into this because we found out very quickly that there were 485,000 dwelling units of deficiency in housing, mostly low income and elderly and we studied the various devices that could be identified to help that. Specifically, the Housing Finance Bill for example, wasn't used and really can't deal with more than a small percentage of that total, but if you could marshal all the state's resources and make decisions about where the school, industrial development, highways, all kinds of assistance programs are going to be focused were interrelated to each other. Now you begin to have some doubt, and you can do something about helping the housing programs. So we just came inevitably to the point of saying that you can't talk about housing or for that matter any other issues that we can think of without first talking about state-wide policy, and there isn't any.

We need policy which says the state of Ohio wants this to happen to it in the future. It wants population growth to be accelerated or not accelerated. It wants to rebuild the inner city areas in Cleveland that are now cleared and empty or it doesn't want to. It wants to bring new industry into the city, or it doesn't want to. It wants to begin a new town in Appalachia Southeastern Ohio as a means of improving that part of the



state. It wants to hold that part of the state rural and open as a sort of resource for the state in open space. See, you can't answer those kinds of questions just off the top of your head. That's policy.

Mrs. Orfirer: Can they be answered in concert with regional government?

Mr. Pistler: No, it has to be answered by the state. Probably in context with a national policy which is what AIA is concerned with.

Mrs. Orfirer: I get kind of scared when you say we can't answer a problem in any area unless we have a plan for the United States. You talk about a linear continuum between Dayton and Cincinnati. It seems to me that what is best for the land that runs between and includes Dayton and Cincinnati can be 95% answered by the people living within that area, in the form of regional planning and development.

Mr. Pistler: It's a picture that begins to be drawn on a very large scale. Then in progressively smaller scale the details show and certainly much of the decision could be made on a very local basis. But you have to begin with something broad.

Mrs. Hessler: When you say that the state has to decide whether they are going to rehabilitate an inner city in Cleveland or Cincinnati you have to have a structure that will enable them to be involved in the political process of making that decision. Now I might say how I believe that the inner city is in the wrong land use. That housing is not a proper land use for the inner city but you're not politically going to be able to change that land use--State policy cannot be made in a vacuum over what is the best land use. It has to be made in terms of the people's communicating and what they want.

Mr. Pistler: Of course, you're quite right...you can't wait. While I might idealistically think that that might be the right way and order in which to do things, the most that we can really hope for is that what is done about regional government is not going to preclude this kind of process being put into being at some point along the way. I don't know that it's all that far off. The federal government has had legislation of this kind in the hopper for a few years. I don't think anything is going to pass this year or next or the year after that. What is in the offing is that there would be some penalty on the distribution of federal funds in those states that don't do state planning. This would kind of be like the billboard thing and if it's no more effective than that's been then we really needn't be talking about it. But still the direction is there and I don't think this is an entirely abstract discussion. Well, so much for that. As far as the other part of it is concerned, one assumes that a process that ideally ought to take place would be one where there is sketching out of very broad directions say at the state level which filters down to a local and regional level. Then filters back up again, and it is a constant reiteration back and forth between those levels of government that is a long-going process and doesn't produce static plans that are big thinking books, but rather is just a continuous dialogue back and forth, between the levels that integrates the details that is of concern to the local community with the broad generalities that are the concern of the larger community. What I'm trying to get over is that there isn't any attention being given to the broader problem at all at this point. The only thing the state of Ohio is doing in planning is some economic planning in the department of development which is a part of the picture but far too small. I'm not arguing either exclusively for land planning; that's only a part of the picture. ALI--that code deals only with land planning, but they're quite

forthright in saying that social and economic planning is another part of it.

Mrs. Hessler: So the interface is what we're talking about as far as the constitution's permission or mandating to set up regional government. What we should be concerned with that we have a proper interface with the local community and with the state.

administrative

Mr. Pistler: I can say that I think that the/state's idea in trying to restructure the highway boundaries and the various other/things into some kind of common boundaries have that relationship to the local government region. It may go with one another. I would think that we would be better off if we have state planning that would give us some clues as to how to draw those boundaries whether we're talking about state administrative regions or whether we're talking about regional government.

Mr. Vogt: The point came up this morning about the Sewer Administrative Authority. We already have the problem, as Bud is well aware, of those kinds of things spilling over county lines. Water taken into the Miami Valley in Butler County for use in Hamilton County--a part of the Hamilton County sewer running in the direction of Butler County and being a part of the Miami River Valley Basin.

Mrs. Hessler: Where that water comes from has nothing to do with the development of the metropolitan area.

Mr. Vogt: Well, it certainly is influencing the development of the greater Cincinnati metropolitan area, because where you can sewer economically or where you cannot sewer economically and that sort of thing is very much a question.

Mr. Pistler: Let me just make a few more points. I'll try another controversial one. I think that there is very little reason to have a city government in the sense of before if you're going to have regional government. And I make reference here to the proposal giving autonomy to neighborhoods within the city as well as to the suburbs. That does make sense when it's done within a regional context. There does however need to be some special arrangements made for the development of some elements of the region that serve the entire area. The city center, the major industrial areas, the major open spaces and the like. These might be controlled directly by the regional government. What would you do with downtown Cincinnati? You're talking about giving autonomy to downtown neighborhoods. Every neighborhood depends on downtown whether they know it or not--each one has some proprietary interests in downtown and each one needs to feel some responsibility about it. The same would be true of Queensgate or the Evendale-Sharonville industrial complex. Conversely, the citizen of the suburban fringe who never comes downtown and doesn't care what happens down here can't escape his responsibility. So I just suggest that maybe there needs to be special treatment for those by extension of the system of higher education, health care, and that sort of thing region wide. It's difficult for me to see the need for county government in the present form under a regional arrangement. Perhaps this role could be reduced to that of providing a system of justice, record keeping, and tax collection with all service and planning functions shifted to the regional government. I can't quite see why you need services and that type of functions at the county level if you're going to have a regional government. Either the local community provides the services, and an example is tax collection vs. solid waste disposal. Let the regional government, not the county, be responsible. We've already got a problem of trash waste from one county to another. In any event it is imperative that the regional government be concerned with the improvement of the

region as a whole and not a collection of local factions vying with each other for favored treatment. The problem of creating a regional legislature that is broadly representative of the constituents is what I'll call the tyranny of the suburbs--it is a vexing problem yet it is a practical problem which is inescapable.

Mrs. Orfirer: Let's take another look at the question of can the regional government be as a division of state government rather than as an independent tier. I just wonder whether there is a possibility that the state under the state statute would be able to accomplish...

Mr. Pistler: Could the boundaries of the regions be gerrymandered in order to serve the interests of whatever the political interests happened to be? Whether an ad hoc boundary commission is really the way to handle that I'm not certain. I'm back on my policy soapbox in that respect. What criteria will a boundary commission use to make the decisions? Now, you've already backed me into a corner on the question of the order in which all of this happens and maybe that's the only way it can work and maybe the boundary commission will just have to get along as best it can and hopefully it can draw upon whatever resources may be available and policy ideas. In the growth and development proposal, planning is set up as an adjunct of the governor's supra-line department and so is the policy. I'm inclined to think that after reflections that that's a little too close to the political side of things. I'm inclined to think that it ought to be further removed than that. Right now in Ohio we don't have any planning at that level at all. The budget is doing the planning. But that's what happens and all I'm suggesting is that if planning and budgeting are done at that level they're on a sort of short-term basis...the time periods for setting up short term planning up to 6 years ...Long range policy making goals would deal in a much longer plane than that. Whether its recommendations would be acceptable...I wondered also whether some comment shouldn't be made about the old home rule problem...whether it's any more legitimate for a regional government to have a home rule than it is for local government. If it's wrong for local government to have 100% veto power on zoning, then you might say the same even for the regional level.

Mrs. Hessler: If you gave the power to make such decisions to the legislature, you would be locating in the sovereign body that power...

Mr. Pistler: Which seems to be the right way to do it...

Mrs. Orfirer: The region would be under a form of modified home rule in that whatever document or law sets up the government certain powers could be denied to the government of the region. Otherwise it would be able to select whatever means it chose to help it perform its functions.

Mr. Pistler: Perhaps functions for each level should be specified. I am concerned with trying to avoid duplication. Say, okay, local government, this is what you get to do. Regional government, this is what you get to do, and these are the things that the state reserves for itself. And we won't duplicate each others' activities. Divide up the total job amongst us. The planning function is the most difficult.

Mrs. Hessler: Housing ten years ago was a local function. Today it is a regional function.

Mrs. Orfirer: Well, we certainly hope that policy making could be done in cooperation with the regional form of government.

Testimony given before the Local Government Committee of the Constitutional Revision Commission

Cincinnati, October 4, 1972

I am Beverly Sidenstick speaking for the League of Women Voters of the Cincinnati Area. Testimony on the state League's position will be given at a future date. Our organization has a record of supporting constitutional changes which we believed would lead to more effective local government.

In 1958, we supported the Metropolitan Federation Amendment, and in 1965, we supported the Urban Services Amendment.

Our recent studies in several areas have indicated a need for additional mechanisms for the delivery of urban services. The crisis in mass transit, overlapping of planning functions and powers, and the ever-present imbalance between revenue sources and level of needs have illustrated the lack of flexibility in present governmental structures.

Our studies have not led us to a sure and simple solution. We feel that this committee is performing a very useful service in promoting discussion of many possible improvements. We are reading your minutes and following your proceedings with interest.

TESTIMONY BEFORE THE LOCAL GOVERNMENT COMMITTEE  
OF THE OHIO CONSTITUTIONAL REVISION COMMISSION

By Willard C. Pistler, Jr.  
Cincinnati, Ohio  
October 4, 1972

Ladies & Gentlemen:

Thank you for inviting me to appear before your committee to discuss the subject of Regional Government. You should understand at the outset that, as an Architect, I approach all such matters from the standpoint of their relation to the physical environment, which is my special concern. However, it should also be evident that the physical environment, especially in the urban context, is very largely the work of man and is therefore an expression of man's needs and actions. Hence, a concern for our physical environment leads inevitably to a broad concern for our social, cultural and economic well being and, in turn, for our methods of governance.

In general, I am inclined to feel that we need better government rather than more government. This would suggest opposition to the introduction of another "layer" of government at the Regional level and indeed I have approached this discussion with concern in that regard. However, it is quite possible to anticipate that some governmental functions can be performed better at the regional level than otherwise and we need only seek then to assure that these functions are not duplicated at some other level. This goal may not be easily achieved.

Before discussing local or regional governments further, I would like to call attention to a problem of government at the State level, which I believe must take precedence. It has to do with the establishment of policy for the future growth and development of the State in the broadest sense. Historically, I suppose that legislators and governors were presumed to have a sense of commitment along these lines, which would guide their lawmaking and administration from day to day. Now, and increasingly in the future, the issues are and will be so complex as to

make intuitive policy formulation impossible. Careful research, analysis and identification of alternatives by skilled experts must inform the judgment of legislators and governors. Progress on long-term projects of major significance must be evaluated and reassessed on a regular basis. Such detached attention to the long-range goals of the State (and Nation) is necessarily inconsistent with the limited tenure of elected officials. Others must therefore <sup>define</sup> ~~fix~~ specific issues so these officials can deal with them.

The Governors Advisory Commission on Housing and Community Development, of which I am a member, has recognized this need and has prepared legislation to create a State Growth and Development Policy Board. The American Law Institute, in its Model Land Development Code, now ten years in preparation, suggests the establishment of an independent long-range planning institute separate from a State planning agency. The American Institute of Architects has named a prestigious National Task Force on Urban Growth Policy to study and advocate such policies nationally.

Until there is well-defined growth and development policy making on a state-wide (even national) basis, the advantage of Regional Government will be significantly reduced. It will be a valuable new tool for governing but clearly defined projects on which to use it will be lacking. Even the geographical definition of regions requires prior policy-making and planning. For example, shall the megalopolitan corridor extending from Cincinnati through Hamilton, Middletown, etc. to Dayton and Springfield, be encouraged to develop as a continuous linear city along a transportation line, or should selected city centers be identified and permanent open space established between them? There are serious arguments to be made from both approaches but until this question is resolved in terms of the whole State's interests there can be no logical definition of the size and boundaries of Regional Government for this area. I would therefore urge this Commission not to overlook this need and to consider making constitutional provisions for it.



It follows, of course, that a good Regional Government should be empowered to do similar policy making and planning at the scale of the Region, which would give direction to the actions of local communities. This too should be given consideration by your Commission.

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Returning to the question of avoiding duplication of governmental activity, it seems to me that, given the existence of an effective Regional Government, there is little reason to have city governments within the Region, at least as we know them today. Mr. R. A. Anderegg, Hamilton County Administrator, last week proposed to the Governor's Advisory Commission on Local Government Services that neighborhoods be allowed to secede from the city and become independent units of government like the smaller suburbs. This makes sense when done within a regional context. It conforms to AIA's concept of dealing with urban development in "Growth Units" of 500 to 3,000 dwelling units plus all related community facilities. Existing neighborhoods can likewise be dealt with as growth units, each of which provides certain governmental services for itself by means of a local government which can be very close to the citizens of such a community.

At the same time, some special provision must be made for those elements of an urban region which serve the entire area: The city centers, major industrial areas, major open spaces and the like. These might be controlled directly by the Regional Government in the interest of all its component communities.

It is difficult to see the need for county government in its present form under a Regional Government arrangement. Perhaps this role could be reduced to that of providing a system of justice, record keeping and tax collection, with all service and planning functions shifted to the Regional Government. Ultimately, all present county functions might be handled at the Multi-County Regional Level.

Implicit in all of this is the notion that there must be some equalization of opportunity and benefits throughout the region. This means a change in the pre-

sent pattern of distributing the proceeds of tax collections of whatever type. Reduced reliance on the property tax would help. I think the form of Regional Government discussed above would also help. In any event, it is imperative that a Regional Government be concerned with the welfare and improvement of the region as a whole, and not be a collection of local factions vying with each other for favored treatment. That would only be a magnification of our present situation. The problem of creating a regional legislature that is broadly representative of the constituency, yet free of the "tyranny of the suburbs" is a vexing one, yet a practical political problem of great importance. If it cannot be resolved, it might be better for Regional Government to be handled as divisions of State Government, entirely under State statute provided always that it must be guided by strong policy-making and planning as discussed above.

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Finally, I would like to make some comments directly related to the draft legislation for Regional Government as submitted by Mrs. Hessler. These follow the explanatory comments which accompanied the draft.

1. If the General Assembly is given responsibility for defining the boundaries of Regions, they will be gerrymandered politically, rather than being established on the basis of good policy and planning. I do not think that an ad hoc Boundary Commission could be expected to provide such policy and planning. One kind of problem regarding the definition of regional boundaries was given above. Another would be the question of whether every region should have a major urban area within it, or whether some regions should be deliberately established as entirely rural. Without growth and development policy and State planning these questions cannot be answered.

2. This is discussed in the preceding paragraph. Additional questions are:
  - A. Is it intended that the entire State be subdivided into regions?
  - B. Can regional offices of State Government follow the same boundaries or would such offices be needed if Regional Government is created?
3. Regional Government, like Local Government, should not have 100% home rule privileges. Certain powers must be exercised on a state-wide basis and Regional Government should not pre-empt this. As discussed above, legislative representatives to a Regional Government must represent the region at large, not special interests within it.
4. Allowable functions of Regional Government should be defined subject to future revision by constitutional amendment. These could include some functions now performed by State Government, as well as Local Governments. It should specifically exclude those functions which must be carried out on a State-wide basis and those which ought to be Local.

A-95 review should begin at the Regional Level but be subject to a check by the State. The State must be able to assure conformance with its overall policy objectives.
5. Should not the law establishing Regional Government define the minimum of functions to be provided and also specify those functions which must be left at the Local Level?
6. What is the intent of the initiative and referendum provision? Concern should be exercised that such provision does not permit the subversion by Local interests of such Regional policy objectives as fair housing distribution.
7. No comment.

8. No comments.

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Thank you for inviting me to join you today. I hope these comments may be of some assistance and will look forward to further informal discussion of this subject with you. Please let me know if I can be of further assistance, especially regarding the Housing Commission's work on Growth and Development Policy and State Planning, and the AIA's work on Urban Growth Policy.

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Ohio Constitutional Revision Commission  
Local Government Public Hearing  
Columbus, Ohio  
October 18, 1972

Attending the meeting on October 18 were Commission members Orfirer, Hessler, Sowle, Cunningham, Ocasek, and Wilson, Staff Consultant Kramer, and participants: Ed Loewe of the Ohio Chamber of Commerce, John Gotherman of the Ohio Municipal League, Chester Hummell of the Township Trustees Assn., Charles Glander, Mayor of Upper Arlington, and Dolph Maslar of the County Commissioners Association.

Mrs. Orfirer, chairman of the Local Government Committee, welcomed the participants and thanked them for appearing. She noted that everyone had received a copy of a regional proposal and the Committee is interested in their reactions to this. Would the regional approach help or hinder governmental activity? How would this type of regional planning solve some problems or would it create difficulties?

Mayor Charles Glander made the first statement.

Mayor Glander: I'd like to begin by offering for your benefit some things that I said to the Ohio Local Government Services Study Commission because I think that in some of these areas your work overlaps. My comments to them tie readily to what you're discussing this morning--the regional proposal for regional government.

Contrary to what I think is the popular notion, at least in Upper Arlington, a bedroom community here in Franklin County of nearly 40,000 people, they do not want to be a bastion of local self government apart from the rest of the metropolitan area. We need some form of metropolitan government very badly--regional government, if you will. The counties would be an acceptable form of government, if they were reorganized, but one of the tragedies of the state government's mistrust of local government that I see in Ohio today is the grant of new permissive sources of taxation to the county which are still organized as they were in horse and buggy days. And this is not to be taken against the Franklin County government or commissioners either. Many services could be centralized in an organized county government or a metropolitan corporation--water and sewer services are the obvious examples--so might police and fire services, transportation, and others. The most important thing, however, is to permit our existing communities through their existing policy-making bodies, like councils, to choose to handle higher levels or services than other communities might wish to handle, if they're willing to pay for them. This is true even if we talk about metropolitan or regional government. So let's provide for this through user charges or locally levied piggyback taxes, for example, and other local options also available to existing councils, where they do no harm to the region as a whole. I've said publicly on many occasions, so I'll say it again, I would annex Upper Arlington to Columbus if I could be assured that certain essential services to our citizens and residents at the level of services presently provided would continue. Our people generally pay more and get less outside help than other communities. They are willing to pay more for a higher level of services, and they ought to have the higher level of services if they wish, even with regional or metropolitan government. If we are to have metropolitan government--county or otherwise--the number of people on the county commission should be increased--not just three. That optimum number would be more like nine and there should be a professional manager. The council or the commission, whatever you propose to call it, should have the power of policy-making function. It

should not be a full-time position, it should be a part-time position, with pay to compensate for the time spent. You have to have a professional administrator who is full-time who is well paid, and to whom all administrative powers are delegated, save only if a majority of the policy making body deems them under their control-- basically the right to hire and fire the professional management. I do not believe in this day and age of delivering services to people that we should have an elected administrator, and that would be one of the first things I would suggest to you to draft. We simply should stop providing more partisan political opportunities and all that goes with them, because even though I happen to be a political partisan, there are too many political races, locally and throughout the state. So I like your draft, or at least the thrust of the draft. I am, however, very concerned about the size of the regions, and of course we don't know what size yet because the draft doesn't tell us how many there are to be in the state. Many counties would have no interest in the services we're talking about, so I think it's very important if these regional units of government are to be created that they be carefully drawn and limited in size to what is today a feasible area for providing common services.

Mr. Kramer: On that point, Mayor Glander, the draft does provide for setting up what you might call service districts within the region. Do you think that that might help to alleviate the problem that you were just talking about?

Mayor Glander: That might, I recognize that, and that was wisely put in, but are those sub-areas to have the power of taxation? So, for example, if you had to solve the Columbus transit problem, would you just pick a sub-area smaller than the regional unit of government and tax only that to solve the problem? Because if the whole regional area covers 5 or 6 counties, it's just an exercise in futility.

Mr. Kramer: "Dividing into districts for purposes of services and taxation."

Mrs. Orfirer: One of the other advantages that I think pertains to this, Mayor, is this gradual assumption of functions by the regions so that it might in one case only take on water and in another case, only take on transportation, and in some cases, both.

Mr. Gotherman: Mayor Glander has done a good job of setting the stage and I would just like to make a couple of observations. I think one is the fact that depending upon whether you come from a city that has a city manager or a city mayor form of government, you have some different opinions about whether or not there should be a limitation, in the constitution at least, on what kinds of structure you can have. You would get some pretty strong arguments that there should be provisions for elected executive officers.

I think you will find very few people that will disagree that there are some functions that ought to be provided on a wider basis, whether we're talking about regions, counties, or whatever. I don't know what the terms would be. On the other hand, I think that we have some quarrel with the structure of the regional government proposed in the draft, one that is going to be a very general unit of government with general governmental powers, really unknown now in the Constitution. I believe that the draft provides a lack of flexibility in a unit that we really have to have a lot of flexibility in, because it's experimental--at least in Ohio, it is an experimental model, and I have a feeling that it is throughout the whole country. We feel that there are very few, if any, legal impediments to the General Assembly in providing the form, structure, powers, duties and functions of local government, or regional government, and I feel the Constitution is not a proper form to structure something



that should be as flexible as what we're talking about today.

Mrs. Hessler: I would agree with you, but the one concern I have is the home rule provision.

Mr. Gotherman: The home rule provisions are really not so much broad grants of power to cities as they are rather specific limitations on the General Assembly as to what they may do to local government, and I think very wisely they are expressed in terms of limitations. So let's just evaluate what those limitations are. In the area of local self government, as the case law has developed, only chartered municipalities today have the ability to control the destiny of their local self government, through their charter, against the will of the General Assembly. It is entirely possible for the General Assembly to regulate the nonchartered municipalities in matters of local self government. In the area of police power, and I think that some of the things that you are concerned with are in the area of police power--zoning power, subdivision regulations--the conflict clause governs. "If there is a conflict, the General Assembly will prevail." And I don't see how you make that any broader in terms of giving the state the upper hand of control in the area of police power--because when there is a conflict the local exercise of police power is simply invalid. In the area of utilities, municipalities have a rather broad grant of utility powers. Perhaps that is the only area where it is questionable whether the General Assembly could pass laws dealing only with municipal utilities. We have two or three doctrines in Ohio that are judicially imposed--first of all there is the question of just what is home rule, the powers of local self-government, and the so-called statewide concern doctrine--an announcement by the courts that there are some things which affect areas outside of the city which are too broad to be considered powers of local self-government. We have the sewage disposal case which decided many years ago that the state could regulate how municipal utilities affected the streams and waters of Ohio. We have the recent Painesville case which holds that the General Assembly may regulate electric utilities which cut across more than one municipality. The statewide concern doctrine, as we know it, which is perhaps a misnomer, is viable, very much alive, and the courts have repeated that as times change and as circumstances of society change, what is local in nature and what is broader than local in nature will change. In the areas of municipal employees there is a section in the Constitution that has been used in one case which says that the General Assembly may legislate for the general welfare of employees and they've used that to uphold the police and fireman pension fund. And to change these governmental relationships would make a lot of business for the lawyers of Ohio. Existing law is not all that unclear really if you know how to find it and what to look for. I think changing it would have a real traumatic effect on the courts of Ohio.

Mrs. Hessler: Could the state legislature under the present Constitution set up a regional government with the power to control and plan for growth and development on a regional basis?

Mr. Gotherman: I don't think that there's any question about it. The zoning power, subdivision regulations--these are all police powers. The state of Ohio may choose to exercise police powers, through the General Assembly, through the board of county commissioners--and to the extent that they choose to actually exercise police powers, if they are really in the business of regulating, there is no question in my opinion that they will prevail over local zoning regulations.

Mrs. Hessler: Let me ask you again another question. What response do you think you would get from the cities of Ohio to adopting the Fordham principle? On the home rule provisions--simply saying that the city can exercise any power not prohibited by the legislature.

Mr. Gotherman: The Fordham principle presumably started off with nothing in the books. We start off with title 7 of the Revised Code that was enacted in 1902 prior to the home rule amendment, which in many instances tries to grant powers but in granting them Title 7 operates to restrict municipalities. If you enact the Fordham principle, then I think you have to require the General Assembly to start over from scratch and re-enact the statutes that they want to have on the books, because most of Title 7 pre-dates home rule, and most of it would be restrictive. We'd be taking a gigantic step backwards as far as day to day operation of municipalities. That's one answer to it, and the other answer is why is that any better than the present system concerning the broad grant of home rule powers? It seems to me that there are rather specific limitations on what the General Assembly can do, and those limitations are not as broad as one might think.

Mrs. Hessler: Well, I'm always reluctant to give a legislative power to courts. I don't think that's where it belongs, and I think that is where it is now.

Mr. Gotherman: Most issues are well settled now. I think that if you change the provisions, no matter what you do, you create the same situation that existed after 1912, and that is a redefinition of those relationships. And what the courts have to do is resolve the disputes between levels of government, and levels of government will have disputes. There's no question about that.

Mayor Glander: I think that the Ohio Supreme Court, which is really where the construction questions wind up, has a singular reluctance to reconstrue anything. For example, I really think that there are areas where there should have been reconstruction and there has not. One of the reasons cities have not responded to the needs of their residents is because of these arbitrary restrictions. What you suggest would put the General Assembly in a position to restrict or preempt the ability of these cities and villages to respond to any of the other needs, other than taxes--you're already limited on tax sources. I think it's considerable mistrust at the state level of the ability and the perceptiveness and sensitivity of local officials. I am opposed to permitting the General Assembly, which all too often doesn't know the problems, to restrict the powers of local government. Recently the Supreme Court decided a case State ex rel. v. Crystal, involving the City of North Olmsted. That city wanted to use a financing method, well known in other states, and in Ohio that involved the formation of a private nonprofit corporation which issued revenue bonds to build a building--Arlington built a city hall this way--and lease it to the city and when the bonds are retired the building eventually becomes the property of the city. Now the purpose of this, admittedly, is to do two things--No. 1, the Internal Revenue Service will hold that this nonprofit agency is really an agency of the city, and the bondholder gets tax-free income. No. 2, the debt is not counted against the city as city debt until this case was decided and here the court said No, what you can't do directly you can't do indirectly, and therefore you can use this method of financing. Now what this means is that the city was way over its constitutional, or "indirect" debt limitation. The court should have realized that the constitutional debt limitations were developed at a time when cities relief almost exclusively on property taxes for

raising revenue and they are expressed in terms of percentages of the property tax base. Now we have a new tax source, the income tax. The court should have reconstructed the constitutional debt limitation provision to say that where it can be demonstrated that the bonds through this other financing source are retired out of a revenue source other than property tax, the constitutional debt limitations don't apply.

Mrs. Eriksson: Our Finance and Taxation Committee is going to be considering that.

Mr. Gotherman: Perhaps the most critical issue that the Constitutional Revision Commission should deal with is debt and taxation, as far as local government is concerned.

Mayor Glander: Either abrogate that decision by an amendment to the Constitution, or provide that a city which adopts at least a 1% income tax may have twice the constitutional debt limit because it has twice the revenue raising capabilities. Another thing bothers me. If you treat this thing constitutionally, where do we wind up in terms of preemption of tax sources? If a regional government enters into any tax field, does it then preempt local governments? If you don't answer this question, it's an open question for the court, and the result may be another preemption doctrine.

Mr. Gotherman: Municipalities feel strongly about including a negation of preemption in any provision in the Constitution that deals with granting taxing powers to another unit of government. I think you should deal with that in your draft, unless it's simply a broad grant to the General Assembly to decide what powers these regional governments are going to have and say that they have taxing power but it doesn't preempt. And we could deal with the General Assembly on those matters.

Mr. Maslar: I have some comments, but cannot speak for the county commissioners generally because as you know our counties vary in size from little Vinton County to Cuyahoga and some problems they simply do not have in common at all. I would agree that there are certain areas where regionalism is most important. You can't do anything about air pollution in the City of Cleveland and do the job. Drainage, solid waste disposal, even the tax base often are problems crossing county lines and city lines. But I would rather go slowly before I leaped and we must be careful about how things will be interpreted in the courts. It's better not to put something in the Constitution if it needs so much interpretation. In most cases, county commissioners will have differences of opinion--we have the metropolitan counties, the middle-sized counties and the smaller ones. We have problems that are really regional. In northwestern Ohio the biggest problem is drainage. In other areas, we have strip mining problems, roadslide, and so forth. In southwestern Ohio, we never heard of a drainage problem. Regional problems, I believe, should be defined as those created by nature, not necessarily man-made. You can't control the way water drains. You can control it but you can't decide which way it's going to drain, either into Lake Erie or the Ohio River. What the counties really need is power to deal with problems without having to go to the legislature each time. We would like to have a little more room and a little more authority to operate. When I first came up here I asked the legislators for the tools to do the job, and we got the permissive taxes. We have done our best with them. We have 30 counties in the sales tax business, over 30 in the license tax and I think there are 5 in the real estate transfer tax. So even though it was political suicide in many counties, the county commissioners had the guts to do it and did it, and it's been their salvation.

Mr. Maslar noted the difficulty of forming regions to take into consideration all the problems involved--economic, geographica, topographic, size, etc. He also noted that counties were still treated as in the "horse and buggy" days, that they perform many functions that most people need but are not aware of who does it, and that many sections of the Code need to be changed--such as one that requires that the county jail be whitewashed four times a year, even if it is a new jail--in order to bring county operations into the 20th century.

Mr. Maslar: Counties have not been sitting around doing nothing. Cuyahoga County has tried to get a charter since 1934, but the present charter provisions are impossible, almost, and we should try to revise the provisions for a charter in the Constitution. We tried the alternative form; Lucas and Montgomery have tried it; Hamilton County has tried several times.

Mr. Gotherman: We would feel that there is need for greater flexibility to provide area-wide services. We have great doubts about the wisdom or the possibility of describing those matters in the Constitution. As I see a Constitution, the state of Ohio has all governmental powers granted to states under the federal constitution. Therefore a provision like this is more likely to be viewed by courts--at least I would think as a limitation on the total grant of the plenary power of the state. What we're fearful of is that the Constitution will prescribe standards for a form of government that is experimental in nature which are either so specific but not specific enough, or so broad that they can't be utilized, and there would be no way to correct it. We feel it would be better to try to accomplish what you want to do by legislation.

Dr. Cunningham: Our duty as members of the Constitutional Commission is to give frameworks of government (enabling acts) and let the legislature determine what may or may not be done on a certain area. Should it not be a question of whether or not we need a regional form of government depending upon area and involving time, place and circumstance? A rural area may not need or want regionalism unless it involved something with reference to pure water or pure air or something of that sort. But in the metropolitan area of Cincinnati, or of Cleveland it could well involve a county but a group of counties and in certain areas it might involve parts of two or more states. Wouldn't something like Toronto, which is a municipal federalism, or Miami, which is a county type of federalism, be the solution? It could be completely optional.

Committee members and participants discussed whether a regional government should be an association of existing subdivisions or consist of representatives elected to represent the people in the area.

Mayor Glander: You shouldn't arbitrarily divide the state up into regional governments, including the elected representatives from these small counties which couldn't care less. That's what would happen when you get an arbitrary division of the state into several regions. Some of the elected representatives who do not care and will not work, may obstruct the delivery of these services in these sub-areas. Mr. Gotherman has said that we don't need anything in the Constitution here--all we need is legislation. I disagree, because the utility area is one area that is still open as to what decision we get between state law and municipal law. And yet the utilities area which in the broadest sense is probably the biggest pressing area, for metropolitan areas today. Take water, sewage and sewage disposal in our metropolitan area here, in Franklin County. We need to provide those services on a regional

basis, I don't think anybody could seriously disagree about that in 1972. I am the mayor of a suburban community, and we need some changes in this field. We get charged by Columbus for some percentage on top of what they charge their own people but the crime of the whole thing is Columbus can't even tell you what its costs are. And it's foolish to continue to have that service provided by Columbus only because it's already got a couple of plants on each side, water and sewage disposal, and therefore can handle it, but we don't even know what the cost of delivering the service is. This is an area where we do need some constitutional help, I think. The one thing you've got in your draft here that appeals to me is a grant of power to take those, with reasonable compensation, so there is the ability to get those which would have to be the nucleus of any water and sewage system. You get those out of the hands of a limited jurisdiction and into the hands of the region, that it has to serve, and that I think needs constitutional help. The legislature may not be able to mandate that.

Mr. Gotherman: There is a Cuyahoga County court case going on that right now. I believe the General Assembly has power to exercise eminent domain over public property as well as private property.

Mrs. Sowle: Could they delegate that authority then to a region?

Mr. Gotherman: I don't see why they couldn't, but no one could guarantee you.

Mrs. Orfirer: I wonder if we might try to do just a little bit of summing up at this point. As I read it, we are all in quite substantial agreement in some areas of function--that there is a need for some kind of regionalism. I get a reflection here of what I think everyone in the state feels. All of us in one direction or another have some doubts about certain bodies solving certain problems. We're concerned about counties in some instances not having enough power or not being a large enough area to handle certain problems. We wonder what kind of role the courts should play, and whether they should exercise a legislative role. We have some feelings that while the General Assembly may have certain powers, they don't always use them or don't know how to use them. And we are concerned about what we are going to put into a Constitution, because it is going to be so very long lasting and difficult to change. Perhaps the General Assembly already has certain of these powers but they are not always the quickest to respond to needs that are present.

Mr. Gotherman: I feel that the General Assembly is perhaps the most representative body that I can think of, the people of the State of Ohio. Perhaps the people of the State of Ohio are not responsive to needs for regionalism, but it seems to me that the General Assembly has reacted to regional problems. It reacts every session, and I work rather directly with their reaction. The only thing that I think we can say is that they have not yet found it expedient, desirable, or considered the possibility of enacting legislation that deals with more than special functions. They have so far dealt with area-wide problems as specific problems and have attempted to find solutions, but I have every faith in the world that they are perfectly capable, competent, and will deal with regional problems in a general area of government the same that they have dealt within the terms of special authorities. There is no evidence that they are unresponsive. I think they are in step with what the people want to do.

Mr. Loewer: Perhaps it would have been better to see if we agree on what the alternatives are to the draft the committee has presented, and to spell them out, and explore whether one might be more feasible or practical than another in terms of



political situation. Number 1, which has some reason to be of high priority, is the state's and the federal government requirements. I think that is going to be an overriding influence in providing regionalism, because the federal government requires planning organizations--we may make use of them for more than just planning--or we may just use them for that, but this June 1973, is the deadline for funding for areas that do not have regions providing services in the planning area. I think it's going to be very important and that's going to move the Governor to institute the regional forms, and they will sort of be the tail that may wag the dog in terms of what the boundary lines may be. The second choice is the county charter route, which has been basically unsuccessful, and the two sides of that one are the exclusive powers for counties and the nonexclusive, and I think the best chance we would have if we ever got a county charter would be the nonexclusive, where the county would be equal to municipalities and not overriding. This would hurt in terms of getting the sewer turned over in a metropolitan region, but practically speaking, you are not going to get that. So if we go the charter route, it appears that the nonexclusive or the concurrent powers would prevail. But if we ever got a county that could get a charter, as the confidence in that county's ability to get the job done increased, it would become evident that local government was a place in which we would place our confidence, and let's then turn the water and sewer over to them, because it seems like the best way to get it done, and there is no longer a political stigma attached. But you're going to have to wait a long time before that happens, and some of the problems may get worse before they get better. I'm an evolutionist with regard to this. The third choice is to let the General Assembly act on counties, and one of the choices, not necessarily the best, is to classify counties, to give the county certain structures because of population, and you can always change the population figure in the General Assembly, and give larger counties strengths that rural counties do not need, and the fourth choice would be the General Assembly's action on regions without a constitutional amendment. The legislature can create regions but may not have the power to give the regions the exclusive powers that you are talking about. That is, to be able to take over sewer and water services; that would be a higher body in some respects than the local communities. I believe that letting the General Assembly cope with it is a viable way. Whether they do or don't is certainly up to the pressures on them to move in that direction. Frankly, I don't see them moving too soon without a prod from the public, but at the same time, the last choice, constitutional revision, will be difficult to obtain. With regard to the creation of regions, I really think we should spell out what will be the status of, particularly, counties--what is going to happen to counties. Are you going to urge that they fade away, are you going to urge that they become districts of the regions--are you going to urge that they assume more powers and the regions do other things--. The final choice is the constitutional revision, detailed as you have spelled out, a general, short section of the Constitution which says that the General Assembly shall provide by general law for the organization and government of regions--now that doesn't provide for exclusive power, and all the details that you have spelled out in your draft, but it seems to me that this is an option that you might think about. Well, those are the five alternatives, and it would seem to me that the county route, whatever it might be, is the best chance for providing local government. And despite the fact that you are concerned with having many counties involved in these regions, if you can begin with one strong, central county, perhaps Cuyahoga County and the Northeast area, you could do a tremendous amount of good there. Some day it may evolve to multi-counties. Good county government is essential.

Mr. Maslar: Hamilton County and Cincinnati have a sewer agreement at present.



There are many counties that are getting into mental health and retardation facilities, and have joined together in regions by geographic choice, and so forth. A good example of regionalism is Delaware County joining with Richland County to provide a juvenile retention center. Many of these things are being done presently by agreement.

Mrs. Hessler: Mr. Loewe, you question whether the assembly has the right to give a regional government that it has set up the power to overrule municipalities and counties. Obviously, they have the power to overrule counties unless you had a county charter, but in the case of municipalities, I agree you also suggest the state and the federal influence can provide regionalism through powers of the purse. If the state requires that certain things be done and agrees to pay for them, you can bet that the municipalities would be glad to have the regional government do it. The reason we have a county-wide sewer district in Hamilton County is because the state helps. So there's a lot of leverage that the state has, to force regional governments if they want to do so and they have.

Mayor Glander: The one problem with that, and it's the same problem that you get into with agreements, is that you'll wind up with all these single purpose districts proliferating. And that's just every bit as bad as what we know today is bad . . . which is the proliferation of municipalities in this state--over 300 of them with their own laws and income tax and forms to file, and the rest of it. And in that sense, we really do need some kind of standardized regional community government that is multi-purpose.

Mrs. Sowle: I'd like to pursue that just a little bit and ask you, Mayor Glander, whether special purpose district proliferation is all bad? It's been mentioned that one county might not prefer to go with the major counties or such matters as juvenile detention, however it might be a natural to go with a major county for water and sewer, and other things. In other words, different functions require different regions for their implementation, and maybe in a sixth alternative, they could operate in a combination of these, growing out of the functions.

Mayor Glander: I can agree with Mrs. Sowle when you approach it from that standpoint--from geography, population, and that other factors perhaps dictate different regions. But let's go back to the other viewpoint, which worries me most--and speaking now just as a plain, everyday ordinary citizen of the state--I am concerned if I can't get a handle on who is raising what revenue from me and how they're spending it. And presumably it is going to be a time in this state, before we can grant powers to tax to special districts. They're going to have to go to the people, and that's the only way therefore people are really going to have a hand in special purpose districts, and if they proliferate--if there are 8 or 10 of them in the area where I happen to have my residence, at any given moment, I'm going to control them through the power to raise funds, and if I can't get response from them in direct action, I'm going to vote against their tax issue, and I think if you multiply me by all the people, you're going to get a hamstrung situation.

Mr. Kramer: I think it's important to look at the committee's draft where the committee started on it, and that is that we are going to have regions, and we have them in some extent now--regional planning agencies, councils of governments and, generally, the estimation is that these things are for the most part not accomplishing their intended purpose. The federal government is increasing the pressure on the states to provide for regional planning. I think that is an important starting point: if everyone agrees that there are regional problems that should be solved

on a regional basis, you can approach that in two ways, either through a general purpose government which has a number of functions or on an ad hoc individual basis according to function. The committee draft takes the approach that if you're going to have regions for planning purposes that the functions should be related to planning, so the region which does the planning should also encompass the area in which the services are going to be provided. And I think everyone would recognize that this kind of a system requires compromises with respect to boundaries, because there isn't any boundary which is correct for every purpose. There's also then a provision made for dividing the regions up into service districts as that may be necessary, so that it should be a general purpose government along with the planning. As far as the ability of the General Assembly to do this now, the Constitution of Ohio presently antedates the system of local government that we have now. The constitution recognizes the present system. Even though the General Assembly through the years has created a number of special purpose districts, I wonder whether it might be too much for the General Assembly to create what amounts to a new general purpose unit of government having taxing and general powers in a broad range of functions. Does the General Assembly have power under the Constitution to delegate a portion of its power to a legislative body of a regional unit of government? That is a very basic constitutional question that we are concerned with here.

Mr. Gotherman: Courts generally review the decision of the policy making body as being the proper public policy so long as it is not limited by the Constitution and I really think that that is not a realistic question to raise about how broad the legislative authority of the state to assume as a policy making decision. I think your function should be to review the Constitution to see where it has limited the power of the state to act, because it is clear to me that under the federal constitution the state has the power to act in all these areas we are talking about. Your problem is only to the degree that the state or the General Assembly are limited to act by the Ohio Constitution. The problem with putting the regional proposal in the Constitution is that I don't know what limitations you would create on the state to act in terms of regionalism. If the federal government changes its tune about financing, if the Constitution talks about these regions in terms of review, then do we cut off federal money because we now can't fit our review agencies to the federal statute that will be enacted some time in the future? I think that I just simply disagree with the concept of the draft. If you want to mandate regions it should just be done in a very general way--to simply say, there shall be regions, or you may create regions by general law and provide for their organization, and their performance of functions and duties and provide by general law for the transference of functions between local governments and regions, and then put whatever controls you want on it. Basically, structure them generally so that the Constitution does not further limit the power of the state to act, in what I think are the very dynamic issues of the times.

Mrs. Orfirer: Mr. Hummell, you've been quiet this morning and I think we'd like to hear from you.

Mr. Hummell: I have a statement prepared which I would like to present. I do represent an association of township officials, but our association has taken no position on this draft. As I see it, perhaps there are three purposes behind this: one for the needs of state programs--to provide for uniform districts for the various state programs. I think there may be sound reasons why, for example, the Industrial Commission sets certain districts for its functions, and different districts for the Department of Taxation, and so forth, and to force these state departments into

uniform state districts might possibly create greater problems than it would solve. Another aspect is that we are creating these districts at least in part to work with federal programs. More clearly, as expressed here this morning, we are creating a new level of government with a duplication of powers already being exercised and additional powers, and this is where we get into the more controversial subjects and questions. The legislature, when it enacts statutes and limitations on local government, is too often too prone to use the word "shall" in their statutes instead of "may." I think this creates a number of problems, particularly with county and township government, and perhaps also with municipal government. My statement deals primarily with the suggestions that we would like to see considered in the Constitution which would be of benefit to the people in the state who reside in the unincorporated areas.

Mrs. Orfirer: Thank you, and if you would like to spent a few minutes telling us the gist of what you would like to say, we would like to hear it. We won't ask you to read the whole thing, Mr. Hummell, but we would be interested in your main arguments.

Mr. Hummell: The statement is directed to the home rule provisions of the Constitution and the fact that this goes back to 1912 when the provisions were adopted for the benefit of municipal corporations. We think that there was good reason in 1912 to do this. There have been changes in the population and way of life of the state since 1912 which I think indicate that some of these home rule powers, or some consideration in that area, should be given to granting similar authority to the unincorporated areas. Very briefly, this is the theme of the statement, and we're all quite aware that today the population pattern in Ohio has changed drastically, since 1912. People have moved to suburbia; we still have the concentration of business and industry in the core city, and this tremendous change in population pattern has not been dealt with at all by constitutional change. I think there is not a substantial amount of revision needed in the constitution to meet this problem, but I think also that it is not acceptable to merely legislate a solution. So I do comment to the members of this Commission the remainder of this statement.

Mrs. Orfirer: I appreciate what you feel is needed in the way of constitutional change, for the townships, and it will be gone into very thoroughly. I wonder if you could tell me if you see the granting of the home rule powers to the townships or the unincorporated areas as being affected in any way by the creation of regions.

Mr. Hummell: That is hard to answer because the regional concept is still so new.

Mr. Loewe: I had a couple of comments that were regarding the draft itself. Referring to the numbered parts of the summary: Number two states that if the General Assembly fails to act on the creation of the boundaries for the regions, then the boundaries would go into effect--but what good are regions with boundaries, but no powers of organization? That is a question that I would like to pose. It says that the regions would go into effect after a certain period of time, but if the General Assembly failed to act, you'd have boundary lines but that's all.

Mr. Gotherman: The problem is that if the draft was designed to be general, it was too specific, and if it was designed to be specific, then it is too general. If you are very general, you put your faith in the General Assembly and tell them, give them directions and let them do it--or you have to write a telephone book and end up with a provision in regionalism that is longer than the Constitution. And it seems to me that when faced with those two alternatives, there is no middle ground

for you to take, and you have to compromise.

Mr. Loewe: Number 3 refers to the statutory from of general law, and one suggestion that I might make would be that you provide for the classification of regions. Permit the General Assembly to classify regions, and that would take care of Dolph Norton's problem, of creating regions carte blanche across the state with the same basic statutory powers for all of them. You could classify the regions; you could create a minimum activity type of region for some of the rural areas particularly, and maximum regional activities for metropolitan areas.

Mrs. Orfirer: We feel that this is provided for in this draft by permitting different regions to assume powers as they see fit.

Mr. Kramer: There's provision for the special act also. On the question of the General Assembly "shall provide for the form of government", the Constitution says the General Assembly shall provide for the organization and government of counties and municipal corporations--you can't say anything more. Certainly, it is possible for the General Assembly to ignore the mandate to provide for form of government, but I don't know anything more that you could possibly do.

Mr. Loewe: Also, in Number 3, I was glad to see you changed the appointed representatives to elected--the reason I say that is that officials appointed from various units will have a rough time giving enough time to legislative duties.

Mr. Gotherman: Could I comment on that? It seems to me that in Cincinnati, the city manager was saying that you don't create a brand new legislative body that may have had no experience and may not know what the problems are, but rather bring in the units of government and let them be represented, at least partially, on the legislative board. People who represented the black community in the city or the suburban white community feel that they want to have a definite authoritative voice in any regional government that is set up. They want to be part of it not just as a constituent, but as an elected official with whatever conflicts they have to live with.

Mr. Gotherman: I think they should have the ability to put the Mayor of Columbus on this regional council.

Mr. Kramer: But isn't there a constitutional problem if this is going to be a general unit of government with a legislative body? Don't you have a problem of equal representation? How can you have a ten member legislative body with five members elected and five appointed from existing units of various sizes? I'm not so sure that you couldn't do this, if this is the case, by authorizing legislation.

Mr. Kramer: If you had any elected representatives, I don't see how you could have a combination of elected and appointed representatives, each having an equal vote in a legislative body, because if you have any elected representatives, they have to be representing equal numbers of people. The cases have been really clear on this.

Mr. Gotherman: In this draft, you haven't convinced me that you're talking about a general unit of government yet. It may be the regional transit authority in Franklin County and the metropolitan sewer district in Hamilton County. Let the General Assembly deal with the problem as flexibly as they can.

Mr. Kramer: The draft anticipates that they would be general government units because they have the ability to take on a wide range of functions.

Mr. Gotherman: I guess that's my main quarrel with the draft. It is not possible to anticipate all the problems that you are going to encounter with an experimental model government and therefore the structuring that you provide in the Constitution becomes not a grant of anything but a limitation on what the state can do, and that's what I object to, I think, more than anything else.

Mrs. Hessler: It's now a double question--has there ever been a court test of the one man-one vote principle as applied to special authorities and districts, and is there any reason why the state could not combine special districts or put existing special districts under a regional government like Twin Cities?

Mr. Kramer: Special districts don't meet the test of a general unit of government.

Mrs. Orfirer: It could continue to exist under the region, as an arm of the region.

Mr. Gotherman: I'm inclined to think that it's not practical to just assume that everything would go on under the regional government.

Mr. Loewe: In Number 4, and this is the key to the setting up of the regions-- give them the ability to make and enforce plans, etc. for the region. This basic function of making and enforcing--surely this word "enforcing" compliance with plans for regions or parts thereof implies a granting of the zoning powers, subdivision regulations, health, etc. for the entire region. It's a pretty strong transfer of powers from local government to a region, and the viability of getting that accomplished even early in the game would be very difficult. I think that's going to be a real problem, even though, if you are going to have the power to make plans, somebody should have the power to enforce them.

Mrs. Orfirer: I wonder if there are any comments from those of you in the audience. If not, then we thank you very much for being here, and we would welcome you back this afternoon, and we thank all of you gentlemen.

Afternoon

Participants in the afternoon were Commission members Orfirer, Wilson, Ocasek, Hessler, Sowle, and Cunningham.

Mrs. Liz Brownell, representing the State League of Women Voters submitted a statement. Lou Briggs of the Columbus League accompanied her.

Mrs. Brownell: The League has supported this concept of a regional authority--particularly to achieve air quality and water quality standards. Environmentally, we support a regional approach to solve these problems. But we do feel that while regional govt. is an efficient and equitable way of providing these community services and also others that you have mentioned in your draft, we are concerned that some services still be retained at the local level. We're not sure which functions should be performed at any specific level.

The League supports the idea of people being able to choose their form of govt., we have long supported that counties should provide their own charters. We support the idea of changing the required majority for adopting a county charter to a simple majority vote rather than the special majorities. In some areas of the state, the Leagues feel that the county may be the most viable form of govt. for that area. We are concerned with the responsiveness of local govt., and believe that no change will take place in the state until people have confidence in their local govts. As far as determination of functions and services of govt., and which level should deliver them, we have believed that the Constitution should provide maximum flexibility to allow local and state govts. to share powers. Local govt. should be given all powers not specifically prohibited by state law, and this allows initiative both at the state and the local levels, but it encourages the state to take leadership in the matters in which it can accomplish the most. The key to any effort to provide regional services is to provide the power of taxation, and we want to reiterate that we feel the local govt. committee should work closely with the finance and taxation committee in this area. And finally we want to stress again what we have stressed before, that we really must look carefully at whether the proposed draft would make a good constitutional provision. It may be too detailed. The fundamental material is what is important to the league as constitutional material, and perhaps some of this material would be better on a statutory basis. We know that there need to be solutions to many of the problems listed: transportation, water, sewage...but we can't predict what services we will need in the future and often these things are interpreted rather narrowly by the courts. And I think that's our feeling on this.

Mrs. Orfirer: What is the League's attitude toward the question raised this morning, whether we should provide an appointive legislative body?

Mrs. Briggs: I think our members would feel that elected officials would be more responsive.

Mrs. Hessler: Do you feel that any constitutional problems with setting up decentralization within cities are present? I assume that you are not going so far as to say that there should be a constitutional authority for breaking cities up, yet decentralization seems necessary in some cases.



Mrs. Brownell: I agree that I don't think it is a constitutional problem.

Woman in Audience: Isn't the problem of decentralization in cities related to the taxing problems--that you cannot have different levels of taxation in different parts of the city?

Mrs. Hessler: I think taxing themselves to provide more services would have to be on a voluntary basis. I don't think we could constitutionally permit an area within a city to vote themselves more taxes which everyone would have to pay.

Mr. Kramer: There must be uniformity of property taxation within a taxing district, and I think the same is true of the income tax and all of the other existing sources of municipal revenue. As far as service charges, we may be able to make a distinction based on the level of services provided in an area--certainly every area is entitled to the equal protection of the laws, to equal services based upon population. Our regional concept does provide for establishing service districts so that differences in taxation would be related to the services provided, constitutionally.

Woman in Audience: I am a member of the D/W representing Lancaster and Delaware. We feel that a regional govt. must have the authority to carry out its responsibility, and of course the necessary financial resources. It must be responsive to the people, and we feel that local govts. want some input and some say in the shaping of these regional plans and services, and in the way the funds are spent. We were wondering about how these services that you plan to provide--the ones that are more than regional planning and review, some functions that are now done by the local level, how would these relate to state services?

Mrs. Hessler: Could you give us a little definition of what is local govt. input into the regions? Do you mean that the citizens are useful in planning on a regional level? Do you mean that local govt. should be represented as a govt, and have a vote on the regional govt. as a govt.?

Woman: I think what the members of the league were saying is that they should feel that the citizens are useful in planning on a regional level. Only local govt. as a government in those cases where they felt they controlled their local govt. Another question we have: would these regions correspond to the proposed regions for delivery of state services?

Mrs. Orfirer: This is not part of the draft. The state districts that the governor is proposing are for the purpose of administering the state functions. We provide for a boundary commission to advise the General Assembly with respect to the boundaries of the regions and it would certainly look to the boundaries the state had set up. Whether they would coincide would depend on the criteria that were used. Of course, they would consider the types of functions and services that regions may immediately, or may in the future, take up. And both sets of boundaries could, if necessary, be redrawn. If it is necessary for some regions to be smaller or larger, there's no reason why it couldn't be done.

Woman: Won't these regions now being set up have some planning functions?

Mr. Kramer: The governor is now considering establishing regions for the purposes of administering state services. Also, there is under consideration a plan to regionalize

in terms of the federal requirement for distribution of funds. We really don't know what the results will be--they could coincide or they possibly could not. We are talking in the committee at present about districts which would have planning and other powers. The problem of coordinating these is being considered. Everybody involved recognizes that you can't have a multiplicity of regions for this purpose--so it's a question of what the priorities are.

Senator Ocasek: There are many districts in Ohio for many kinds of programs. The gov. has designed his regions because local politicians don't want their offices moved here and there.

Mrs. Orfirer: For the audience I would like to point out that Mr. Hadinger is with Citizen's Research, and Mr. Holland is a councilman from Upper Arlington and the Mayors and Municipal Officials Committee.

Mr. Hadinger: I will try to summarize my points. First of all, looking at the draft providing for regional units of govt., it really wasn't quite clear to me whether it was being created primarily to facilitate federal and state planning, or to help local governments, so my conclusion on that was that there are probably aspects of both. But in looking at this I think it was set up primarily to help state and federal govts. in plans and in administering their programs. It could be slightly differently designed if we were working from the bottom up rather than from the top down. If regional govts. are established constitutionally, we run into some dangers of rigidity. Most literature today commenting upon the rapid changes going on in our society deals with this. The concept of a regional unit of govt., per se is, I think, a little bit early from the standpoint of acceptability and workability, and on the other hand, in the future, if it is not established now, we could run into a political-sociological lag in some areas, because of the rigidity of the constitutional language. You might run into the problem that the courts would become much more heavily involved in this, commenting on the legality of certain types of actions and relationships as well as the purpose. Commenting upon home rule, again it is really difficult to look at what we have and say what it would mean. There are a lot of unanswered questions. I think we have to keep in mind in establishing this, that whatever it is, it is going to be regarded as another layer of govt., and that has effects on tolerance and participation.

In looking at this from a constitutional-legislature standpoint, we're saying that one of the main problems is that we lack the appropriate structure to handle whatever happens to be the local problem. To the extent that I have gone through the literature that has been written on this, there is overwhelming emphasis on restructuring, and this is the basis for whatever happens to be the problem at the local level. We need to get away from this a little bit and start looking at what are the social, economic, and political characteristics and problems which are prevailing at the local level. It is hard to say what relationships prevail at the present time. One of the arguments that is received for an areawide govt., for example, is that there is a demand for public services. I would not question the fact that there is although I'm not sure what the term means when it is used sometimes--if people in a given area want more services, or whether we need new services, in terms of a growing population. Or some other factor. Some feel that the quality of urban life depends on the level of public services. I think we're getting into some dangerous areas in this in terms of public sector vs. private sector responsibility. We can't treat government as an abstract entity, apart from ourselves in approaching the problem primarily by restructuring. I believe this is the back door approach in terms of public problems in general. It's not necessarily

getting at the real problem. It's like requiring safety devices on cars when the real problem is the driver. From the standpoint of whether or not we will need these regional govts. because the fed. govt. will be requiring them, I don't think that makes them technically necessary. Another thing is the traditional view which says that we have a multiplicity of govts. and it is almost a pathological phenomena. There is chaos in organization and there is overlapping. I think what I am really driving at is that there are many arguments for why we should restructure local govt., and I question whether we should approach it this way. In lieu of mandating something like this, personally I would opt more for the evolutionary approach. We need variety in our approaches to the local problem. Govt. has to go beyond the point of just providing public services, and establish regulations for the type of environment in which we can achieve our goals.

Mrs. Orfirer: Thank you very much.

Mrs. Hessler: So many problems of the average citizen are looked upon as though they are local when they are not local at all. We are struck by the number of people that call in and say that govt. is not responsive. I can't get what I want. This means either that they can't determine where the control is or that they don't know how to influence it, and also that the govts. are not responsive enough to the people. And you are bringing in the problem of private institutions, private enterprise, and community councils and all that kind of thing, which is also important, because when you are involved in redeveloping the inner city, if the people in an area feel that they are involved with govt. in doing it, then you have support for it, and if they try to do something and they don't find the govt. responsive to them, they take it out on all govts. So participation in the governmental process is a problem. To the extent that you have many levels of govt. that permit a citizen to participate, I don't think that it matters how many you have and what levels they are broken down to, as long as they have the power to do this.

Mr. Hadinger: It is whether or not the people feel that they have the opportunity to participate.

Mrs. Orfirer: I think you are getting at a very important point--the level of service and the level of govt. that we are talking about has a specific level of participation which can also take place with it. Which is appropriate at that level, but not appropriate at another level. You talk about preferring an evolutionary rather than a revolutionary approach, and I think that that has been present in all of our thinking. This was drafted with the idea that the regions would be enabled to take on certain functions. So there was no across-the-board delegation of functions or the taking over of anything, but only in this evolutionary way, as each particular region needed a particular function. Each would be different. We wanted very much to be able to provide that a region had the capability to take on functions, as necessary, for a problem that can't be answered at any other level, and that the other regions not be saddled with unnecessary functions.

Regions are going to be set up by the governor or by demand of the fed. govt. It's a question of what the regions' powers and structures will be, and I think that the attempt was made here to provide for an evolutionary and orderly assumption of powers. They would have the capability but not the necessity of expanding.

Mrs. Orfirer welcomed Dr. Rosemond, Columbus City Councilman, and asked for his comments.

Dr. Rosemond: Columbus has the types of problems that most cities have. We have a problem with housing--particularly with low-income groups. I don't think that regional government would help that--I don't think that they would be too much inclined to let poor people move out where we could solve that. We are looking at new and better ways for planning for sewers and disposal of wastes. We also have problems with street-lighting. We would probably like to put more money into it. There are health facilities that we could go into, and of course we have recreation that we would like to improve, and we have the usual problems of any city. I don't know that our problems are as acute as they are in a lot of cities.

Mrs. Orfirer: I can understand that you may have many reservations about the idea of regionalism, and I think we all have some. I wondered whether there are any areas that you see that possibly could be benefitted by a regional approach.

Dr. Rosemond: Well, I think we are currently engaged in a regional approach on transportation--we have the Central Ohio Transit Authority, the levy did not pass, but they are still in operation, and hopefully, we will get that off the ground. Of course, we are a member of the Central Ohio Regional Planning Commission which reviews applications for any federal funding that may be required, and I'd like to point out that the regional planning commission in this area seemingly has worked very well. I don't think that in Columbus there have been that many problems, as opposed to some other cities where the system has not worked--notably Cleveland. Since Columbus now probably controls the water for the region, we really already operate on a regional approach in that we supply water to a lot of the suburban areas, so from the standpoint of Columbus, a regional authority is not necessarily an advantage.

Senator Ocasek: Dr., does Columbus have any serious financial problems?

Dr. Rosemond: We don't really have serious financial problems. I think if you talked to the mayor today he would say there's been a budget made and we'll be in the red a little bit if we don't get our check for revenue sharing, but no, it's that way every year. At the end of every year we have to scrounge a little bit to make ends meet.

Senator Ocasek: I had heard you had a critical financial plight, and I just wondered, you've had an income tax for some time, and done quite well with it--so you don't think that something of a regional govt. with many many functions is critical. You wouldn't call it that.

Dr. Rosemond: No, I wouldn't call it that.

Mrs. Hessler: Dr. Rosemond, I want to ask you a couple of questions. Is most of the industry within the Columbus metropolitan area within the city of Columbus? In other words, are the jobs for unskilled labor within the city?

Dr. Rosemond: A lot of them are, some of them are outside. I think our largest employer in Columbus would turn out to be Western Electric, and that's within the city. We have industries located outside too. And this of course is one of the reasons for aggressive annexation policies, so that you do have room for industries to locate. I think you are driving at the point that we would benefit from the industry which is outside.

Mrs. Hessler: What I am trying to do is to distinguish between Columbus and the other

cities in Ohio because Columbus is the only city that has been successful in this type of annexation. In large cities there are virtually no unincorporated areas outside within the county, or within the metropolitan area which close off Columbus from expansion.

Dr. Rosemond: Right, I'm glad you said that. We have other incorporated areas but they don't really choke off the city. In fact, we completely surround Bexley, and we surround Whitehall and Reynoldsburg, but a major portion is within the boundaries of Columbus.

Mrs. Hessler: Well, now let me ask you this question. Does your ability to solve the housing problem for low-income areas relate to the location of your industries? In Cincinnati, for example, all of the new industry is outside the city, where the city has no control over the possibility of low income housing, so that the question of employment where the industry is for low income families is a very critical problem. Now, you do not have this problem.

Dr. Rosemond: Oh, we have a problem of low income housing, both in terms of getting private industry to develop it, and I'd say, even worse, probably getting locations that would be acceptable to the people. So we do have those problems but I think that they can probably be settled better on a local level in Columbus than they could be on a regional basis. Considering some of the comments we've had, for instance, if there is housing to be placed, say anywhere near any of the suburban communities, most of the time, they're 100% against it. I don't think this will change if we have a regional govt., though.

Mrs. Hessler: Do you have segregation both by income and race?

Dr. Rosemond: In our housing problem, to a great extent we have that, but it's better than a great many other communities. On other words, we have blacks and integrated housing on all sides of town. I think that there is some segregation, and there still is some attempt to keep blacks from moving in.

Mrs. Hessler: The reason I'm pressing this point is because one of the major problems that some metropolitan areas have is the segregation by income and race within the central city. People cannot move outside in low income brackets because of local zoning laws, and yet industry is outside. Now if because of Columbus' ability to annex, where you have solved that problem, is this not an argument in favor of regional govt. because this would even go beyond the ability to annex. I mean we no longer have the ability to annex in Cincinnati, neither does Cleveland. So maybe the only alternative is a regional govt. or a stronger county govt. which would get into the problem of housing.

Dr. Rosemond: We probably have a fairly strong city govt. and also have a large area. It is easier to control movements in that area than if you were dealing with all of the surrounding suburbs. Regional govt. is good for annexation, and there are some persons who are against that. They say you spend a lot of money, but I really do think that it helps the city to expand and have room for industry, and of course we always encourage business to locate in Columbus. I personally went to N.Y. to talk with a firm that did locate in Columbus.

Mrs. Hessler: Has there been any organized opposition to annexation in the black community? We've found a great deal of violent opposition to annexation in the black



community against improving county govt. or forming regional govt. in communities such as Cleveland. I'm wondering if the fact that it dilutes the power base in the black community in the city--whether this has created any opposition?

Dr. Rosemond: There have been few comments, but there has been no organized resistance by the black community to it. Of course, one of the things you are doing, you don't really bring in any people--you bring in a lot of territory.

Mrs. Hessler: But that's what you have been saying--annexing before the people were there.

Dr. Rosemond: That's right. This does dilute the base to some extent, but speaking on that point, I guess there would be problems of a political nature too, so I would imagine the political parties would look at that.

Senator Ocask: I have a question Dr. Rosemond might not want to answer because it has some political implication--you have seven councilmen in Columbus, for over half a million people?

Dr. Rosemond: That's right.

Senator Ocask: There are 33 councilmen in Cleveland for some 700 thousand people. Do you have any comment on your ability to represent your people in relation to the size of council?

Dr. Rosemond: Yes, I have a comment on that, because I am on record on that. It's my feeling that the seven councilman are not enough for the people they represent. It's further my feeling that all seven councilmen should not be elected at large. But we should have some from districts and some at large. I brought in a proposal to enlarge our council to 11--each would represent 90,000 people. So far, this has not passed, we had a 4-3 vote in council in favor but it took 5 to put it on the ballot so it was not on the November ballot. But I feel that this would be better representative because it would get at some of the things I talked about by getting closer to the people, if you had some districts where you could be assured if you got your man or your woman from every district, and then of course you would have a balance of at large--where you could be sure to get the views of the overall populace. I added that because some people think that district councilmen only look at the problems of their district. I don't really think that is necessarily true, but to avoid any problems I have included it. I think 33 councilmen is too unwieldy.

Senator Ocask: I have heard a lot of people talk about that and you can sell the argument that you are going to lose your representation, your ward is going to get larger and at the time that we talk about regionalism and metropolitan govt. being supposedly better service, I find many constituents making the argument that I'd even like to have a councilman of my own, more than I've got now.

Dr. Rosemond: Well, this is true, in the proposal that I brought up, the main reason why some neighborhoods came out against it, was that they were glad to have their own neighborhood in it, but they didn't like the next neighborhood in it. You should just have it in my neighborhood, and then I could go for it, but now you got these other



people and I don't like that. But they have to represent the same number of people.

Mr. Holland: We have seven councilmen in a city of 40,000 people, and we can't get the job done either.

Mr. Ocsek: We have 33 senators for 11 million people and we do get the job done!

Mrs. Orfirer: Dr. Rosemond, I'd like to go back if I may to something you brought up earlier when you talked about bringing about permissive regionalism. I wonder if you would expand on that.

Dr. Rosemond: I would see that coming from the state legislature, mainly as an agent of the legislature so that areas that would like to combine would have that opportunity. I would not like to keep Cincinnati or Cleveland from going into this if it means a lot to them, just because I don't think it is suitable for Columbus. The legislature passed the regional transit bill--before that was passed we could not form a Central Ohio Transit Authority. This is the way I see the regionalism. It's o.k. to have it there, so that it may be advantageous to some areas, but I think to make it mandatory would create more problems than it would settle.

Mrs. Orfirer: You think that even if there were to be the kind of provision that said that before they took up any functions there would be a vote--that is not satisfactory?

Dr. Rosemond: No, not in my thinking because actually you draw up the boundaries and you say that there will be this govt. regardless of the powers that they have at this moment. I understand that these regional units of govt. would undertake different functions or whatever--the way you are saying it is whatever the people will give them to do. But once it was set up, they'd say o.k., maybe you're not taking over the services in all the areas at this moment, but then it will go to other areas and then I can see certainly that the regional body would want to do the best job it could, and I think that it would seek to undertake large measures, and this would not always be in the best interests of all of the people. I feel really that you have gotten to the point where a lot of the problems of the central city that we are discussing now would get worse. Because everything has to come through the regional govt. and these people would not necessarily be concerned about central city problems--they might be concerned about better roads and better transportation and so forth. There are still people that need their housing and some of the other advantages of life.

Mrs. Orfirer: Mr. Bay, we haven't heard from you. Mr. Bay is the Exec. Director of the Development Committee of Greater Columbus.

Mr. Bay: I speak personally, and not from an organizational standpoint. While the Development Committee of Greater Columbus has gone on record as saying that we have to do things regionally, we don't have any answers. Even speaking personally, I'm not sure that I have any answers, but I do speak from about 17 years of experience in local government in Virginia and Ohio, Kansas, and Penna. It is apparent to me that the state is going to have to intervene if we're going to do anything well regionally. I don't think that leaving it up to local officials will provide the kind of regional coordination in planning and development that we should have. Dr. Rosemond discussed Columbus and its problems vis a vis the suburbs. I see a growing problem really of the specialized regional govts. existing now in Central Ohio. We have separate transit authorities--

we have separate planning commissions--we have a separate health planning federation, we have a separate park board, and so on. The problem I see is that we have no way, no mechanism to coordinate them,--health relates to transportation to land use and land use to soil--and yet if there's a dispute between these agencies, we have absolutely no way to resolve that dispute. And this I think is the growing problem. I don't think the problem is the central city against the suburbs--I think the growing problem is regional agency vs. regional agency and trying to bring them into coordination.

Mrs. Hessler: Isn't your review agency supposed to coordinate them?

Mr. Bay: It's supposed to, but it's really a kind of gentleman's agreement when the review agency is voluntary. If you don't give the right kind of review, the review agency is pretty much at loose ends. So I think it is essential that the state must trigger regional action. And this is what your proposal does. Each of our regional agencies, for the most part, has different geographical areas involved, and I think the state would be helpful in finding a turf point. I think we do need the basic organizational format established. Each of our regional agencies has a different kind of policy board. The average citizen couldn't name his representative on the law enforcement council, let alone the mid-Ohio Regional Planning Commission, and so forth. We set up a bunch of regional agencies allegedly responsible and responsive, but the people don't know who their representatives are. So I think that a basic organizational format would be helpful. You have to consider efficiency, and responsiveness. The power to a regional agency which is assigned may need to be strengthened in my view and may need to be clarified--particularly in the relation of the regional agency you're suggesting is to be to other regional agencies. It's not clear to me that it's to be an umbrella agency--that the existing regional agencies would automatically be absorbed.

We are studying the Atlanta Regional Commission, the Twin Cities Metropolitan Council, the Colorado Services Approach, and the Seattle Approach to see how they function. They have certain sanctions that they can impose and certain ways to resolve disputes.

I think that I have some concern about writing into the constitution what is essentially the A-95 review feature because that may not be with us forever more, with revenue-sharing and other similar types of programs, this type of feature may wither on the vine and perhaps should not be written into the constitution. I do have some concerns about the assumption of powers by the regional agencies, even though there are some safeguards. This assumption of powers should be soft-petaled or other types of sanctions considered, rather than giving this much authority to a regional agency. I don't know whether this should be in the constitution, but somewhere there must be provision to fund the regional agency. Voluntary contributions do not work. There has to be some guarantee, and I pray it is not the property tax that such an agency would have to get going. It is not easy to set up an agency, and then let them go to the voters for money like transit authorities have had to. At the same time that you come up with some triggering mechanisms for regionalism, I hope you are also considering removing all the provisions in the constitution which may hamper regionalism. And finally, I am sure that you are all aware of what the other local govt. groups are doing in this same area, and I hope that your activities are coordinated.

Mrs. Sowle: You mentioned that maybe this provision gave too much authority to regional govt. Could you be more specific?

Mr. Bay: Under the planning and review powers, there may be more specific powers that

could be added there, or maybe spelled out more clearly, as to just what the regional agency can and cannot do, when it deals with the plans of other government and agencies, I think that perhaps can be strengthened. I was concerned with the assumption of authority in Sec. 5. We're saying let's have a regional agency that has planning, review, development functions, and at the same time, we're adding the potential problem of the assumption of authority to perform services. That might be more than the voters would be willing to take.

Mrs. Sowle: Did you have any specific constitutional provisions in mind that hamper the development of regionalism that should be repealed?

Mr. Bay: No.

Dr. Rosemond: A question, Mr. Bay. On the statement of coordination of different regional groups as we have now, would you not envision that in the regional govt. that you would still have some commissions that would handle certain problems, or would this regional agency handle everything? Or do you feel that they would be able to coordinate better the commissions that they set up?

Mr. Bay: I didn't mean a more general sort of umbrella agency to which all these commissions would have to submit their plans for review. That would be the central coordinating process. Hopefully, and ideally, I suppose I would like to see all of the agencies under one roof...a general coordinating agency to which all the other agencies would be responsible. Right now it is every man for himself. Today it's school bonds, tomorrow it's transit--next week something else. Our total community power is not really evaluated in any overall way. It's what one agency has ready to go on the ballot, and it is poor coordination.

Dr. Rosemond: So you would still have separate functions or commissions but this agency would coordinate. Even in the city of Columbus we have a board of health, a transit commission--we do have other commissions which are set up--they don't necessarily talk with each other all the time.

Mr. Kramer: The theory that we're proceeding on this far is that, as far as the allocation of functions, you decide that by giving the regions the final say. They will decide which functions they will take over unless prevented from doing that by referendum or the g.a.

Mrs. Orfirer: Several members of the legislature have made it very clear to us that they don't want the responsibility of making those decisions. They don't want to say to a number of counties you have this need and therefore we will provide it. They would have all their time taken up with local problems which is something that they are trying to avoid.

Mr. Holland: In addition to being a councilman from the city of Upper Arlington, I am also on the Central Ohio Transit Authority Board. We have been faced with this particular problem as to what should constitute our region. On our vote in May, for instance, the levy almost passed in the city of Columbus. In the outerlying regions, it passed. And in the far off suburbs, it did not. We are hoping that the levy will soon pass. We're wrestling now with the question, should we be a regional agency for all of Franklin County, or should we be more short-sighted? And I think what many of the people in farther out suburbs told us, in no uncertain terms, was that they really didn't want

any part of a transit authority. Some of them have their own transit, and they feel that it's what they want and that it is adequate for their purposes. The rest of the people in Franklin County indicated I think a pretty good disposition towards a regional transportation authority despite our failures at the ballot box. We got less than 30% of the vote in some areas--we got 46% overall. And so I think any regional authority has to be concerned with whether the people really need that service on a regional basis. And to that end I have some alternatives. I think that we shouldn't try to sell any particular govt. format on efficiency alone, because I think the American people usually opt for the form of govt. which is more controllable by them than efficient. Any system that we devise should be responsive to the people, and directly so, through single member districts and so forth. Any structure that we set up should be flexible in creative ways--in geography, in form, and in function. If we set up a regional umbrella system, and constitutionally say that if you have a regional govt. it has to meet certain criteria such as single member districts, then you can get around the mandatory problem of a mandatory system that Mr. Bay mentioned, but you will still solve the problem of the fragmentation of govt., and you create the problem of a super level of govt. You're still going to have disparities in the functions that it must perform--a transportation system may be needed by certain areas but other areas may not want that. You could have, under the umbrella agency, an agency answerable to it, composed of citizens groups interested in the particular problem that crosses county or municipal lines. It might be a little less efficient but it would be more responsive to the needs of the people affected, because those not affected wouldn't have the say. You're still going to have to have the regional authority set the priorities of govt., and this is one of the greatest problems. Competition for the tax dollar is a great problem.

It appears that you are going to have to create a bicameral system of regional govt. to get the needed flexibility. I think you are going to have to ultimately leave it up to the people as to whether they want to participate in a regional system. I'm not advocating sitting back and saying let's let the people do it. I think you have to present the issue periodically, and I would think that you would want to spell out a system, for example in transportation, whereby adjoining agencies would be periodically given the right to vote on the issue, and make the vote mandatory, and I think you would have more power in the people. We don't have all the authority we need in local govt. to solve regional problems, and the other problem with local govt. is the inability to raise funds. We thought that we had done pretty well with the income tax, and now the state has taken over that system. I think you might devise something along the lines that Dean Fordham has suggested, and that is to let the power reside in the local govt. structures unless it is specifically taken away from them. This is unlike our present constitution. It should be spelled out in the first instance that the local govt. has certain powers unless specifically denied to them. I think any regional system is going to have to bring along with it factors of decentralization, and I think single member districts are mandatory. In our community of about 40,000 there are 7 of us elected at large. All citizens know that council meetings are open and an agenda is published. We try to maintain a well-informed public. Still, people in our community charge us that they are not told. Now we are dividing our city up into neighborhoods and trying to meet with people on a neighborhood basis, particularly with regard to land use planning. The idea came up that if you have a single member district maybe it would be a good idea to require the rep. of that district to hold public hearings periodically in his own district--so that he is in touch with the people mandatorily. As to your particular format, maybe it is wisest for the state to set the initial boundaries of regional govt. but I'm not that sold that this would work throughout the

state. There may not be enough interplay in certain areas, while in Cols. and Upper Arlington there is. If you are going to submit a format, it should be flexible, and the choice of the format of regional govt. should be submitted to the people, or perhaps to the state legislature. The problem with the present local govt. laws is that they become fixed and then they are never changed. I have yet to see a form of local govt. that is the best. To establish one single form of local govt. destroys innovation in govt. Innovation is something that we need at all levels.

I also think that in your constitutional amendment should be set authority for the legislature to establish certain minimum standards in services such as welfare and housing, things like that--the minimum standards should be set. Going beyond those standards should be up to the local govt. In the constitution, a local govt. impact statement should be incorporated, similar to the federal environmental impact statement which is required. I don't think it's too much to ask for state and federal govts. to be required to incorporate local govt. impact statements. We at the local govt. level simply do not have the funding to do all that they charge us with. We now have to examine swimming pools, but the state legislature did not give us the additional money to do it. If additional duties are going to be added to local govt. functions, then additional funding must also be added. Your approach will do away with single purpose entities, which is good because they are removed from the people they are supposed to represent.

Although I am an elected official in my own community, I am not elected to the transit board and I am the only local elected official on that board.

I think people can make conscious choices among alternate forms of government. The major concern that I would have in a specific regional proposal is one of funding. I am afraid as it stands now there's going to be another entity in the race for the tax dollar. Local govt. finisheds last enough; I don't want to be further back.

The regional proposal that you have here does not go far enough. I see a real problem for example, with county structure as it exists today. I'm not sure that we need an elected recorder, an elected engineer, an elected auditor, treasurer, and three elected county commissioners and none of whom are responsible to the other. Each can go his separate way. Each of them has a half a dozen additional jobs which don't relate to his real job at all. Any structuring of a regional system should address itself to getting rid of this separation of functions. Some of these executive type tasks can be performed by the one executive that you have.

Lastly, I think that any system that you devise should have incentives for local govt. to act, particularly financial incentives in those areas that demand areawide solution. Additional matching funds to do the job right, if you do it cooperatively so that you do minimize the multiplicity of actions and duplications of efforts.

There's no reason why we can't have disparity of services. Some things are more important to some people than they are to others. I live in a community where it's extremely important to people to pay an additional \$27 a year for garbage collection at the door. There are some parts of this county where the people don't care one bit about that, and I think the difference is fine. I think if the state establishes minimum standards, if there is equality as to those minimum standards, we can devise some assessment system of costs, so that the disparity in services can be provided so some people can enjoy the benefits of something that is more important to them.



Mrs. Hessler: One of the things that was of considerable concern in the various court cases on the financing of education is the point you have been making--there are school districts that would like to have a higher level of educational services, but with equal funding so that everybody has access to equal educational services, this may be difficult to do.

Mr. Holland: There's definitely a problem there. I don't agree with the U.S. Supreme Court on this. I recognize that they're telling us, all of us, that education is something that cuts across boundaries and that everybody is entitled to an equal educational system. The schools are going to have to find some way of meeting those requirements of the Court. I think that what we're going to wind up with is a single form of taxation throughout the state, with everything in one big pot and then divided among the school districts. What are we going to be left with in the way of alternatives if a particular music program is important to the people of one school district or even one school? I supposed those boards are going to have to find another system.

Mrs. Hessler: It seemed to me as you were describing this umbrella regional govt., and I think you said if there is going to be any regional govt., then there should be one regional govt. which coordinates all others, which may be of lesser area but the overall one would establish the planning standard--which it seems to me is the Twin Cities program.

Mr. Holland: Yes, my statement was if you are going to have any regional govt. at all then that regional govt. should follow certain guidelines. With as many different systems of creating regional agencies today as there are people imagining them, it seems to me that once an area starts a system, then it should be stated in the constitution, if you're going to have one, and you're going to have single member districts in the legislative body. I would take a two-tier approach, that is, have a permissive system so that part of that region can enter one function and another representative body from only those parts of that region which are affected and are interested would be formed.

Mrs. Hessler: Over which the overall regional agency would have the ability to control the budget.

Mr. Holland: Yes, I think your ultimate regional authority is going to have to be the coordinating one that sets the priorities.

Mayor Wilson: For those of you who don't know I'm the mayor of a community of 20,000 on the western side of the state--I've been about fifteen years on the job. I've been a member of various groups in the state. I am a member of the Constitutional Revision Commission, although I am a member of the Finance and Taxation Committee, the result of being a CPA for 25 years. But all this is not necessarily to lend any wisdom to what I am about to say, but it is to give you some idea of the viewpoint from which I speak. One thing that I have gotten out of my involvement with local govt. is that the people fear district govt. This is often brought about by the fact that they don't understand and often don't know what goes on at a govt. level removed from them. A lack of knowledge of these things often does breed fear and distrust. State legislatures in general are not responsive to local problems. This is why cities have been strong advocates of revenue-sharing, recently and in the past, and especially this year. One of the things in our Constitution here in Ohio is the fact that some people somehow distrust the



legislature and there are a lot of roadblocks built into the Constitution to try to keep the legislature from doing certain things and to make sure that they do other things. And even today this mistrust is obvious and rightly so. For example, the Constitution provides that half of the income tax has to be returned to the place of origin. In order to get around that the state legislature levied a corporate franchise tax, so that it would not fall in this provision. I think that this aspect of moving government away from the people is a strong argument against regionalism: creating another level of government which has the power to tax--and that's the only way to look at it and that's all there is to it. If they have power to tax, they are another level of govt. I would much rather see something else done. If this group in this room were today given the task of creating a govt. for ten-plus million people, in the geographical area that is Ohio, it's extremely unlikely that we would come up with the system at work presently in Ohio with 88 counties and all the townships, but we can't solve that problem by just sticking another level in here. Drawing lines on a map doesn't solve problems. I'd much rather see legislation which permits more cooperation between levels of local govt. with an idea towards getting rid of some of the levels that we have now. This is being accomplished by evolution, not revolution. In my home county we have a fire protection extended into township areas, and trash removal. Sooner or later, we are going to have to have some cooperation on sewerage services. I think we need legislation to permit more of this type of cooperation. Now I can't come right out and say that I would like to abolish all townships, because there are some townships which serve a good purpose, and they are necessary. They are capable of taking over other functions of govt. without creating an additional level. In this draft "except schools" is mentioned a number of times. Schools have done exactly what I am talking about--they didn't create an additional level of school administration; they consolidated it. Given our transportation and communication systems, we'd be better off looking for some sort of consolidation of govt. entities rather than creating a taxing authority at another level of govt.

Mr. Bay: The law does provide now that townships and municipalities really can essentially turn all of their functions over to counties. The problem is that that really hasn't been done. In Columbus, it takes a minimum two years to negotiate these sewer contracts, between the city of Columbus and the suburban communities, and that's on a standard contract. Any of these things can occur, but can we afford the time that it takes, item by item, and negotiating particularly in the metropolitan areas?

Mrs. Orfirer: So many of the people here have pointed out today that we already have a multitude of levels of govt., and it would be lovely if a move to get rid of some came from the bottom up. I think it's because it hasn't come from the bottom up on a voluntary basis that we are all here and trying to figure out the best way of getting it done without slamming it down ~~somebody's~~ throat but still providing for regional needs that can only be handled on a regional basis. I think we have to keep very much in mind what would and would not be taken on by a region--what services and what powers and what communication would be left within the smaller unit of government. I don't see anything evolving on a voluntary basis--I'd invite you to come and live with me in Cleveland for six months--and really get a taste of what is involved when you cannot get govts. to cooperate with each other. Maybe it's not that the people are a different brand of people as much as that the problems differ, and you get into different types of communities.

Dr. Rosemond: I did want to make this comment. I'm wondering really in view of all of the problems that would be presented if you have this mandatory arrangement, I'm wondering would there really be any time saved. In my view, the problem would still be there--you would still have to get the people to agree--you're going to have to take it to the voters, and I can honestly not see a lot of time saved. I think there would be a lot of failures. I don't think because the state legislature would set up this mechanism, unless it were mandatory, and no local voting on it that it would really get off the ground. I think it would be better if it came from the ground up.

Mrs. Orfirer: Dr. Rosemond, do you not think that there could be a region which would take over a particular function, whether it be water, or sewers or whatever that the people within that region would not feel that it was a good thing that that function had been taken over--and that they would have no desire for a referendum on that--whereas if it has not come from the top down, but had waited until they all held a meeting and had gotten together and had said yes, that it might never come about at all?

Dr. Rosemond: It is being accomplished on a voluntary basis in some communities--they are getting together and seeing the need for joining hands and doing it. Maybe it takes a little more time, but I think that is being accomplished.

Mrs. Hessler: Let me give you an example--in Hamilton County, we have, for twenty years, been trying to solve the problems of sewers, and then of course when sewerage disposal became a requirement because of water pollution, that one too. We were absolutely unable to get agreement of the county and the city and all the local govts. until the state stepped in and said that you have to make a county wide sewer district. We did this, and at our hearing a couple of weeks ago in Cincinnati, we had mayors of small communities, we had the county manager, we had people from big communities, and everyone said this is working perfectly, and it's an ideal situation.

Dr. Rosemond: Right, again that's part of the federal and state incentives. That's why some of the other regional programs have been set up--because it's really been necessary to get the programs off the ground and get the funding that you need from the federal govt. If people really see a benefit, I don't think that there's a problem, but when you come in with a new level of govt., and theories on how great it's going to be for them, I'm not so sure. I noticed in Hamilton County though that you did get together on the police cooperation--a central system where they can all tie in --I thought that was good.

Mrs. Orfirer: Mr. Madigan, we'd be happy to hear from you.

Mr. Madigan: My name is John Madigan, and I'm a law student at OSU. Obviously I don't have the credentials that some of the other mayors, and commissioners here today have, but I appreciate very much the opportunity to speak. I am really impressed with the wide range and depth of the topics that were discussed here today--I think this is a great step forward in the area of cooperation of govts. I have prepared a statement that was passed around to the committee, and I really don't have very much to add to that, except that I'd like to respond to some of the comments made by Dr. Rosemond and Mrs. Hessler, and the Mayor of Upper Arlington who was here earlier today about the fact that people in Madison County don't care at all about metropolitan transit problems here in Columbus, and Dr. Rosemond's comment that the people of Columbus would feel that their power would be diluted by a regional govt. I think one solution to that would

be to not just set up a certain sized given region in every area--like a region encompassing four or five counties--or something like that--but there should be different types of regions for different areas--like a metropolitan region for metropolitan areas which would encompass the suburbs and the major areas and cities, and around that possibly an urbanizing region that would cover cities that were growing and possibly someday might be brought into the metropolitan regions. Then there would be regions like county regions which would cover the rural areas in Ohio. And I think that this would be the best way of getting at the specific problems of each area without moving govts. too far from the people that they are trying to help. I'd also like to make one comment about Mr. Hadinger's and Mrs. Hessler's arguments about what regional govt. will do for the people--is regional govt. just a way of making people feel that they have a voice and a say in what's going on? I don't think that's the answer--I don't think that you should just give people the illusion that they are going to have some authority. I think the idea is that the regional govt. would be responsible and accountable to the people, because they directly elect the members of it--that way they would be directly responsible for its sewers, and its planning, and what have you. Everyone here is worried about efficiency--the efficiency in services, the decrease in the cost per community. But I think that above that there is a leadership aspect to regional govt. which would be beneficial. You would have the leadership coming over a wide range of areas and services, I think this is the major reason for a larger area of govt., and a larger area of accountability. One more point I would like to make--I don't think this is directly related to the constitutional aspect but I don't think anyone has brought up the idea of including some form of the judiciary in the regional system. If you have a region that is going to take over all services, why not have the region take over some of the court level--say a court of appeals or maybe even common pleas court--this would of course require constitutional revision in the article which sets up the courts. This is just one thing that I think should be included in any regional govt. because I think the courts are an important function of government.

Mrs. Orfirer: Thank you, Mr. Madigan.

Ohio Constitutional Revision Commission  
Local Government Committee  
October 18, 1972

Summary of Meeting

The Local Government Committee met at the Athletic Club in Columbus at 7:30 p.m. on October 18, 1972. Present were Mrs. Orfirer, Chairman, Messrs. Gillmor, Heminger, Fry, Mrs. Hessler and staff member Kramer. Also present was Mr. Jenkins of the Development Commission of Greater Columbus. Mrs. Orfirer suggested discussing the draft that the Municipal League presented today.

Mr. Kramer: The first paragraph of their draft is really the same as the committee's revised draft. The second paragraph is similar but it drops the provision for individual forms of government by special law; it provides for general law or charters and adopts the same format that the General Assembly could provide for the procedure for adoption of charters.

Then it has a third paragraph providing that by general law could provide for the transfer of powers. So that under this draft, as I understand from a quick reading of it, a region would have only those powers expressly granted by the general assembly. But the basic changes are that there is not the provision for the planning and review and regulatory powers, and it does not deal with contractual powers. It doesn't have the provision of assuming the functions and the procedure for assuming functions.

Mrs. Orfirer: In the Committee's draft, we've provided for taking on functions as they are evidentially needed within a specific region. One of the stumbling blocks of the Mun. League draft, it seems to me, is that the G.A. would be involved in the problems of individual regions or sections of regions.

Mr. Kramer: The G.A. could provide by general law the same kind of procedure that is provided for in the committee's draft for assumption of functions--provide by general law for transfer of functions between regions and other political subdivisions. The G.A. would not have to deal with individual regional problems.

Mr. Fry: I think as long as you generalize it is o.k., but I think it would be a step backwards for the G.A. to get into local situations.

Mr. Kramer: The only case in the committee draft in which special legislation would be provided for would be in the provision of alternate forms of govt., so you could lobby the G.A. just to provide the form of govt. That was put in really as a new idea to try it out, to see whether anybody thought it might be a good idea. The same thing could be done with the counties or municipal corporations, as opposed to the present alternative forms provision.

Mrs. Hessler: "The G.A. shall provide by general law for the form of govt. of regions. The G.A. may also by special law applicable to one or more regions provide for an alternative form for such region or regions but no such form of govt. shall become operative until it has been submitted to the electors thereof." I don't see any point to that. You could do it by charter.

Mr. Kramer: The same machinery would have to be provided for a charter. The committee's draft does not have the complicated provisions that we now have in the Constitution as to electing a charter commission and provisions for adoption of a charter by counties. This way you can have a charter but the G.A. will provide the procedure for framing and adopting it. Some of the worst problems that come up every year in my practice at least are about the procedure for electing charter commissions and adopting charters. In this draft, the only requirement in the Constitution is that it be adopted by majority vote. Present constitutional provisions for county and municipal charters are intended to be self-executing, but they leave a lot of gaps and no legislation has been enacted to fill in the gaps. What happens if somebody who was elected to a county charter commission was not eligible, what happens if somebody who was elected resigns or dies; there's no provision for replacement. How many votes of the charter commission it takes to promulgate a charter, can you go along on a sort of common law principle of the majority rule? The best you can say is that under common law majority rules, but suppose you have a 15 member charter commission and one member dies. How many votes does it take then? These things are not provided for in the Constitution. I think one way of solving the problem is to let the G.A. provide by statute for it. As problems become apparent we can change the statute. You don't have to amend the Constitution. The G.A. is perfectly capable of providing a workable procedure for framing and adopting a charter.

Mr. Gillmor: We should keep the Constitution as simple as possible.

Mr. Kramer: I think probably back in 1912 when the powers for municipal charters were put into the Constitution this was something new and were in the draft the local govt. committee presented, and nobody could see the gaps.

Mrs. Hessler: The reason that article XVIII on municipalities is more detailed is that it provides all the powers.

Mr. Kramer: It contains excruciating details with respect to utilities because that was a big issue at that time. It has the provision about excess condemnation which surprisingly enough the framers of the 1912 amendment thought would be the salvation of the state and nobody has paid any attention to it ever since.

Mr. Fry: I agree that we should keep it simple and not spell out the details in the Constitution.

Mr. Kramer: There really seems to be no reason to provide details of charter adoption by these regional govts. in the Const. I think there may be some debate over whether we should have this special law provision or whether we should have something like we now have with respect to municipalities and counties, the provision for optional or alternative forms and what kind of form should be provided for. When we draft we get into what form this should take, since we made some minimum requirements about legislative and executive bodies. Now this is something you may or may not want in the Const. If you feel strongly that it is essential for the regional govts. to have an effective operation and that this requires separate legislative and executive bodies, put it in the Constitution. If you feel that it isn't necessary, or if you feel that this is something that could be left up to the G.A., then it need not be in the Const. A starting point for the discussion was the fact the regional govts. should not have a form of govt. like counties. We can have one more like a municipal corporation. You can put it in the Const., leave it up to the G.A., or up to the charter framers.

Mrs. Orfirer: I am assuming you all have copies of the second draft. We recall that it was suggested to us at the meeting we had with Judge Whiteside and Judge Duffey and John Gotherman that we have some sort of a triggering mechanism that would enforce the creation of the regions if the G.A. did not act, so that's what Section 1 provides for. The comment was made today in regard to this that it doesn't do much good to enforce the setting up of the regions if the G.A. isn't going to give them powers.

Mr. Kramer: The question did come up today as to whether it would do any good to provide for the setting up of the regions and then to provide this sort of back-up provision if the G. for some reason were unable to agree or unable to provide the regions with a certain amount of power and the report of the boundary commission would in effect become law and establish the regions. If then the G.A. would not go on and as is provided in the second section and provide the forms of govt., etc. That could be a problem but just as in the case of the Const. now providing that the G.A. shall provide for the organization of the government of counties and shall provide for the organization of the govt. of municipal corporations, you have to assume that given that kind of constitutional mandate that the G.A. would carry out its function, and whether or not a court would enforce that or could is beside the question. The G.A. has mandated duties and you have to assume that it would carry them out.

Mr. Gillmor: How will the boundary commission be selected?

Mr. Kramer: As of now, the provision says that the Governor, Speaker of the House and President Pro Tem of the Senate shall jointly appoint a commission. I think we may need some more work on that because that could lead to a deadlock. We may have to provide whether it would be by majority or individual appointments by each.

Mrs. Hessler: And if the legislature didn't intend to act then these people might decide not to act either and a deadlock might result.

Mrs. Orfirer: There seem to be all kinds of assumptions here that I just don't quite feel easy about. If the G.A. is hung up on approving what the boundaries should be, would they go into effect as delineated by the boundary commission? If the G.A. for some reason were not going to act at all that this would be a triggering mechanism.

Mr. Kramer: I think it unlikely that the G.A. would just sit on its hands and say we're just not going to do it, although the Constitution mandates it--that wouldn't happen. It would just be a matter of being unable to agree.

Mrs. Orfirer: For the purpose of seeing that certain boundaries go into effect, if the G.A. got hung up, it would happen on approval of the recommendations of the boundary commission. Now let's go back to review how the Commission is set up, and how it would be composed to see whether we do think those are the correct people, the correct number and whatever. The first sentence reads "The G.A. shall by law divide the state into not less than blank and not more than blank regional units of local govt. and shall establish the boundaries thereof," etc. This has seemed to me to be the general consensus of the committee but there's no reason why we shouldn't discuss this and make whatever points you want to make.

Mr. Heminger: We are presumably back to the point that the legislature already has the power to create regions and do we want to make it mandatory?



Mr. Fry: As I noted before, I had a proposal when I was a freshman Senator that we spent a lot of time on, coming up with a provision by which a county commissioner in a certain area could get together with a county commissioner in another area and voluntarily form a regional operation for say water control, etc. I don't think it's ever been implemented.

Mrs. Hessler: The legislature took action, but nothing ever happened.

Mrs. Orfirer: This is why the committee originally reached this point of feeling that the only way this is going to happen is to mandate it.

Mr. Fry: We've got other factors in it now--all the governmental programs that are based on regions, and the administration saying we want to set up regional areas. What may work out for an economic or an administrative purpose may not work out at all for an environmental purpose or water control. Do you feel otherwise, Iola?

Mrs. Hessler: Someone made the comment today that if you set up a regional govt. it can do nothing just as well as it can do something. If you mandate it, you don't necessarily come up with anything, although I admit that the legislature does not always take advantage of permissive language.

Mr. Kramer: What do you mean, that you don't necessarily get anything if you mandate it?

Mrs. Hessler: Well, if they set up regional governments and don't necessarily give them any real powers and this bothered everybody this a.m.

Mr. Kramer: Under the Committee's draft, if they are set up, they have certain powers. The legislature has to give them something to do and regions would have independent powers of their own, because they would be constitutionally granted powers unless the draft provided that the G.A. had to give them the powers, but it would have to be re-written that way.

Mrs. Orfirer: We started out with the theory that there were regional needs that were not being met or were being met inadequately, and progressed from there to trying to determine a system under which they would be met. I think what we've tried to do is strike a balance between this idea of keeping the Constitution concerned with fundamental law and still provide for what we thought was essential. Theories are fine and you follow them until they get in the way of what you're really trying to do.

Mrs. Hessler: To set up across the board regions may be quite unpopular. It would make the proposal harder to pass. If it is permissive, there will still be enough pressure on the legislature from those metropolitan areas or regions that want something, to encourage the legislature to do it. I think we've come a long way from the alternative forms that took them so long to do. I'd like to get the reaction of the legislators.

Mr. Fry: The thing about setting up a region is that, if no one wants to use it, well and good, at least the region has been set up. I'm afraid that if we leave this to the local option, it may never happen--I hope we get into county govt. because there you have a big problem when those 3 commissioners sit there and look at each other and say who's going to take the lead in this.

And nothing happens. I think you've got enough reasons to establish regions now, such as the delivery of state services. If you don't do it, you just don't have under the present system a county govt. that is going to say let's get the other guys together, because most of them are worrying about their own problems.

Mr. Kramer: Iola, in which of the areas would the regions not be needed?

Mrs. Hessler: What about Appalachia?

Mr. Kramer: There's already an Appalachian commission. They really have been treated more on a regional basis than any other area of the state because of the common problems. They're all small, sparsely populated counties and they presumably are the ones that are much, if not more, in need of outside general outside assistance than the others. And under coming federal requirements if they're going to apply for aid for roads they've got to make their applications and have them reviewed--they're going to have to have some form of regional organization anyway.

Mrs. Hessler: I'm assuming that the state does have the power to set up regions for state planning purposes, and to meet the federal requirements anyway.

Mr. Kramer: And presumably there are going to be regions established well before this is adopted.

Mrs. Hessler: That's right, so I think that a lot is going to be done before we have a constitutional amendment. And maybe if you give permissive powers and you already have an operating planning agency that is a review agency in every area of the state with certain state powers, it will be a lot easier for the legislature to give it additional powers than if they had to start from scratch.

Mr. Kramer: But wouldn't the same thing be true in the matter of whether the people are going to accept a regional concept?

Mr. Gillmor: I think you have to be very careful about the right of the people at all points to exercise some kind of option at the ballot box. You have to have some place in the constitutional amendment where that is set out or otherwise that's your difficulty in getting a majority vote on it.

Mr. Fry: You mean the people have the right to veto the powers assumed by the region? You would create the regions and then if the regional authority wanted to take over certain functions, the people could veto it?

Mr. Gillmor: No, I'm thinking about the initial time that you adopt a constitutional amendment, that there has to be something in it that says the people can vote on it.

Mrs. Hessler: You have a referendum provision. If they decide to use the referendum--they don't have an automatic vote.

Mr. Kramer: Well, we do have that in the draft now. There are two things presently in the draft, both the referendum and the possibility of a veto by the G.A. so it could go either way.

Mr. Gillmor: On the veto by the G.A., I don't think the 60 day provision is a realistic time if you want to have a meaningful veto. With the procedure we follow it's simply hard to get something of consequence done in 60 days. Now what do we have on the Supreme Court rule, 6 months?

Mr. Kramer: We've had no real discussion about that particular matter; it was put in for discussion purposes.

Mr. Gillmor: It takes about 50 days to adopt a bill that's not even controversial.

Mr. Kramer: What about the basic idea of a veto by the G.A? We've had no real discussion about that yet. We talked about alternate control. If this is something that the G.A. would want to reserve to the state, it would be a means of doing it.

Mrs. Hessler: I don't think the G.A. should be allowed to establish regions on a piecemeal basis, region by region.

Mrs. Orfirer: You could provide for regions within or including those counties which had reached a certain population.

Mr. Kramer: It might be mandatory for every county that had a 50 thousand population or more, must be included in the region, or something to that effect.

Mrs. Orfirer: We mapped it out. I've got the maps here and I will give them to you before you leave. I sat there drawing these lines--it was the worst hodgepodge.

Mr. Fry: You get people voting on an issue that really doesn't affect them if you do it region by region. If you do it statewide, everyone in the G.A. is considering it and voting on it. Every so often we have two or three things coming down from Cleveland saying that Cleveland's got a problem, or that Hamilton County has a problem.

Mrs. Orfirer: That could be handled by the alternative plan.

Mr. Fry: That's right, and it's not right, because you sit around at the table, and one guy says I promised a guy in Cuyahoga county that I would vote for it, and you really aren't getting away from local legislation.

Mr. Kramer: And of course what happens is if everybody has to be included within a region, then the debate becomes who's going to be included in what region.

Mr. Fry: Until the regions really become effective, they won't care that much.

Mrs. Orfirer: You know I just think we are going to have the most enormous educational job to do.

Mrs. Hessler: We really aren't equipped to do that. The legislature doesn't want us to do that, I don't think.

Mrs. Orfirer: What we need is a Citizen's Committee. I mean an educational job not so much as to spell as to clarify because I think what people get scared of is not so

much what is in this draft for example, as what they conjure up in their minds from the term regional govt. They think about metropolitan govt., they think about losing their identity as a municipality or as a township, they think of losing their offices.

Mr. Fry: That's the reason we have to get some of these recommendations together and get them through the Commission and get them on the ballot by May or November of next year because it will be a lot better than getting them on in 74. I hope we will have something on the ballot from everyone of the sub-committees in 73, because there will be less politics than there will be if we're doing it in a campaign year.

Mr. Gillmor: I agree with what Charlie is saying--there is an election every year but the issues people focus on are different. If this were on the ballot in a year that the general assembly and the governor were running, it becomes a lot more controversial than it does in another year. I think next year is the best time to go at it if you want to keep it on an intellectual basis--you don't have to get into the political football emotional type of thing.

Mr. Kramer: We started out at one point in consideration that first of all we'd try to come up with the best recommendations possible--leave aside the political considerations, not that we're not talking about a practical world, but to come up with the best suggestion first and then worry about the compromises because of political considerations. And then make the changes, but first of all, you decide what should be done, and then decide if it can be done. You can't be completely impractical, obviously, but make the focus first on what should be done, and then on the basis of political considerations, because they are going to ultimately dictate what you can do.

Mrs. Hessler: I'm surprised to hear you say that you want it next year.

Mr. Fry: We've talked about regional govt. long enough now that we're getting pretty close to making some recommendations, and go on to some other things.

Mrs. Orfirer: Well, I think we'll just proceed at what is the logical pace and see how we're doing, where we are and where the local govt. services commission is and we'll just dispose of this in our own minds as we did with classification of counties and move on to the next step without bringing it before the full commission anymore than we brought classification of counties to the commission. We don't have to become immersed in regional govt. and not go onto other things even though we may not decide that it is the moment to introduce it.

Mr. Fry: I would think that by May or November of next year we ought to have 5,6,7, or 8 things on the ballot. I think we have to do that because we'll be going back to the legislature saying that we want to continue this, and we want to have their confidence.

Mrs. Orfirer: It's more important that we know what we are going to propose than when we are going to propose it. Going back to the draft, do you think that there should be a maximum and a minimum number of regions as guidelines or do you think that should be left up to the discretion of the g.a.?

Mr. Fry: I think it should be left to the discretion of the General Assembly.

Gillmor: You don't want to get too many of these regions so that they're too small.

Mrs. Orfirer: I think it's kind of a moot point because you're going to have it probably not vary too much from what has already been set up.

Mr. Kramer: Could you rather have no reference to the numbers of regions?

Mr. Fry: Just a minimum and a maximum.

Mrs. Orfirer: How about revising the number and boundaries of regions? We provide that they shall not be revised within a period of so many years after...you all understand that we didn't want them barging in every six months and that we wanted flexibility in it.

Mr. Kramer: Iola, I think, had some reservation before about the three-fifths vote on the revision of boundaries.

Mrs. Hessler: I'm always nervous about requirements for extraordinary majorities.

Mr. Gillmor: I can envision this becoming a little bit like reapportionment, because when we get down to actually looking at districts, like in Cuyahoga County, what the people up there are going to be looking at, is this republican or democratic control? I think you are going to run into that problem, no matter what--not so much in the regions as you do in the legislature, and I think that the three-fifths vote might be tough.

Mr. Kramer: This would be as to revision of course, not to the initial set-up of the regions. I think that once the regions are established, inertia would set in and it would be very difficult to change them unless there were some compelling reason.

Mrs. Hessler: Like a real argument for the dividing of a district into two, or something like that.

Mr. Kramer: Probably. We didn't make the initial creation too hard. The three-fifths vote was put in for discussion and as a suggestion that once we got them set up they shouldn't be changed unless there is some compelling reason--and for a three-fifths vote you would have to have bipartisan support. Now whether that is necessary or not is debatable.

Mrs. Hessler: And you could have a change in politics, which might make it highly desirable to have a change.

Mr. Gillmor: Forty years from now, it might just be a problem just because of a change in circumstances in the region too.

Mr. Kramer: It's hard to visualize this becoming a partisan issue, really, except in some unusual circumstances like whether you divide it or not. I think that just the fact that you've established them once and they've begun to operate, would make it difficult to change unless there was some compelling reason, so I don't think I could argue strongly in favor of retaining the three-fifths vote, if there is any objection.

Mrs. Hessler: Let's make it a majority then.

Mrs. Orfirer: Alright. The next major thing in the draft is "shall not be revised within a \_\_\_\_\_ number period of years after its establishment or last previous revision."

Mr. Fry: We do our reapportioning and redistricting on a ten year basis....

Mrs. Hessler: That's a long time.

Mr. Kramer: The thing is once you get them set up and they find out within a relatively short period of time how it's working.

Mrs. Orfirer: Ten years is pretty long to have to live with your initial mistakes.

Mr. Kramer: The first change would probably be the only one you'd ever make.

Mr. Gillmor: I think making it beyond the term of one governor--beyond the length of on gubernatorial term would tend to remove politics.

Mrs. Orfirer: We could make it five years...I think that's logical.

Mr. Kramer: That would certainly give you enough time to judge.

Mrs. Orfirer: Alright...now "not later than \_\_\_\_\_ number of days after the effective date of this section, the governor, the speaker of the house of representatives, and the president pro tempore of the senate shall jointly appoint a commission"...I am going to stop here and discuss this.

Mr. Kramer: To appoint the commission, I'd say about 90 days--would that be too short?

Mrs. Orfirer: Is ninety days alright? Now, I think more important than that are who these people are and whether you feel that these are the right people and enough of them and what you want to do about the joint appointing. First of all, are these the three logical people to do it in your minds?

Mr. Fry: I think there should be a balance between the legislature and the executive, I agree with that. You may not be able to jointly appoint.

Mr. Kramer: That could be a problem.

Mrs. Orfirer: Is there any problem at all with them all being from the same party?

Mr. Fry: Yes, I think there should be a restriction that they shouldn't all be from one party.

Mrs. Orfirer: Yes. They could all be of one party and that could present a problem. It would be possible. Who would be a logical fourth?

Mr. Fry: If you take the minority leader from one you have to take the minority leader from the other.



Mrs. Hessler: That would make five.

Mrs. Orfirer: Which would be a tie-breaker too. How about the chief justice or something like that?...somebody from the judiciary.

Mr. Kramer: I don't think a member of the supreme court would want to get involved in this.

Mr. Fry: You don't need a tie breaker with the governor, the speaker and the president pro tem--you've got an odd number.

Mrs. Orfirer: No, but we were talking about that they could all very well be of one political party. So we could add the minority leaders.

Mr. Fry: Well, what about providing that each one appoints three, not more than two of whom shall be of the same political party?

Mrs. Orfirer: Can't you just say they shall be of bipartisan representation, or something like that? Let them worry about it.

Mrs. Hessler: Or say they can appoint a commission of five, seven or nine, whichever they decide on, of which no more than \_\_\_\_\_ can be of one party.

Mr. Kramer: But then two people--a majority of 3--can decide who the 5,7, or 9 are.

Mrs. Hessler: Then let them decide--at least it gets done.

Mrs. Orfirer: You're still going to have the four from the other party.

Mr. Kramer: But appointed by someone from the opposite party.

Mr. Fry: Let them each appoint three--and then you don't have to wait while they get together to make up their minds, and shuffle, because all of them are busy and they've got a lot of other things on their minds.

Mrs. Orfirer: In other words, give them each the power to appoint three people without having to consult with each other.

Mr. Gillmor: I think that's the quickest thing to do.

Mr. Fry: This doesn't hold you up--I think it's best.

Mrs. Orfirer: We'll hold this to confer with the rest of the committee, and see what their reaction to this is.

Mr. Kramer: What do we do about not holding other political office?

Mrs. Orfirer: Let's eliminate that. Within how long after their appointment should they be required to present their recommendations to the G.A.?

Mr. Kramer: That's a pretty tough job. You're going to have to give them some deadline.

Mrs. Orfirer: Six months? That sounds like not too long but long enough to do a difficult job. ... "to the number of regions to be created and the boundaries thereof"--so we will leave it to them to recommend the number to be created without guidelines.

Mr. Heminger: We say 90 days after the effective date of this section, they'll appoint the Commission. Up above we say the General Assembly shall by law divide the state into regional units. But I assume that they're going to determine the number; does the General Assembly have to take action first?

Mrs. Orfirer: No, the rest qualifies it, doesn't it, Gene?

Mr. Kramer: It was the intention that first the boundary commission would be appointed and would recommend to the General Assembly both the number and boundary lines--and then the General Assembly would act on their recommendation.

Mrs. Hessler: Maybe it comes in the wrong order then, Gene?

Mr. Kramer: The chronological order is not right, but from the standpoint of presenting what is being done, that would be clearer after reading the whole section. It is not in strict chronological order, but I think it is important to start out with the statement that the General Assembly shall create the regions.

Mrs. Orfirer: All right. "Recommendations as to the number of regions to be created and the boundaries thereof." These are both the functions of the boundary commission. Each region shall be composed of compact and contiguous territory and shall be bounded by county lines except municipal corporations shall be located in only one region entirely.

Mr. Kramer: Let's talk about the matter of whether they should be bounded by county lines. I think the argument for not doing it is that the regional functions and problems don't necessarily follow these artificial political boundaries that are county lines. That is very true with respect to a number of functions, but I think the countervailing argument is that we are talking here about general units of government being established for a number of purposes and that these boundaries are going to be compromised in any case, and may turn out to be the ones that are best for most purposes and that since these regions are going to be exercising authority over subdivisions within the regions, including counties, and have the ability to take over functions from subdivisions within the regions, including counties, there doesn't seem to be more reason for following county lines than not.

Mrs. Hessler: What do you do in the case of a city that is over a county boundary?

Sen. Gillmor: In the case of a municipal corporation, you would just have to decide in which county that city primarily rested . . . the only thing I thought of, and it may not even be necessary to put it in there--what about an annexation? It's a very small point but you've set up above that they can't change the regional boundary for five years. But it's a small problem but I can see it in these communities.

Mr. Kramer: It's an important one and it's well pointed up--that would be your thought--that if a municipality annexes territory it should bring it into the region.

Mrs. Orfirer: Wouldn't that be logically handled?

Sen. Gillmor: No because you've said up above that you can't because you've established the boundary and it can't be changed for five years.

Mr. Kramer: So that we should make some kind of exception for that. I think it has to cover that. I'll work on something.

Mrs. Orfirer: All right, we'll leave that up to you. "and shall be of appropriate size and composition for the purpose of carrying out on a regional basis the powers and duties provided for in this article"--which is certainly a great improvement over the first draft. "If the General Assembly does not, within        days following the submission of such a report, pass a law establishing regions as provided in this section, the numbers and boundaries of the regions provided for in such report shall become effective and shall not be changed except as provided in this section." That's our triggering mechanism that we talked about earlier.

Mr. Kramer: Now how long shall we give the General Assembly to act on this--that would be a pretty tough thing to do.

Sen. Gillmor: You might have to key it to so long after the convening of the next legislative session because if you went sine die in August of the last year, and then they reported in September, you'd have four months before the legislature would be back in session.

Mrs. Orfirer: Where do we have that other section?

Mr. Kramer: That's on the veto.

Mrs. Orfirer: Why don't we do it the same? You don't want to extend the date, but follow the principle.

Mr. Kramer: Within so many days from the commencement of the next session of the General Assembly--

Sen. Gillmor: You can't really foresee what the manner of operation of the legislature is going to be. You could have a situation; it would be possible for the legislature, say that you're towards the end of the session, and this thing is submitted--and then the legislature just goes into skeleton sessions, like we've been doing for the last few months--so there's a possible way of doing it--I mean there's a way for the legislature to get out of that box.

Mr. Kramer: Of course, it's something that has to be done only once.

Mrs. Hessler: Also they have to pass it, or if they don't pass it, it goes into effect anyway.

Sen. Gillmor: They might decide to adjourn, which is when you have the problem.

Mr. Kramer: Let's say you give the General Assembly six months in any case.

Sen. Gillmor: Suppose that this constitutional amendment were passed, and we were in a session like this year, and in a session in November like this year, and then the boundary commission reports back. And it's November 14--under the language of the bill it would have to be done in 45 days. See what I mean. Why don't we just

give them a certain minimum time--that might be one possibility.

Mr. Kramer: Would six months be reasonable?

Sen. Gillmor: I think that six months is reasonable, because for instance, that's the provision that we have in the constitution now on the approval of the rules by the Supreme Court, which is a somewhat analogous situation.

Mrs. Hessler: Wouldn't that make the whole thing take two years?

Mrs. Orfirer: It's an important thing. We've waited for 200, now we wait for two.

Sen. Gillmor: Maybe there's some precedent that we can follow about the way that it's done in the Modern Courts Amendment on submission of the Supreme Court rule. I think that's requiring that it be submitted on a certain date, and then the legislature has six months from the date that they were submitted. I think it's that the Supreme Court has to submit the rules on January 1, and then the legislature has until June 30 to do something about it.

Mr. Kramer: I think it is safe to say, tentatively, for now, 180 days.

Mrs. Orfirer: Is there some way that we can get out of setting all these time limits?

Mr. Kramer: Not if we're going to use some kind of triggering mechanism like this, or whatever you want to call it. There has to be a time on it. Otherwise it isn't effective.

Mrs. Orfirer: Section 2. Form of Government established by general law, special law, or charter; executive and legislative officers. "The general assembly shall provide by general law for the form of government, for regions, and for the framing and adoption by the electors of any region of a charter providing for the form of government of such region. The general assembly may also by special law applicable to one or more regions provide for an alternative form of government for such region or regions, but no such form of government shall become operative in any region until the same shall have been submitted to the electors thereof and approved by a majority of those voting thereon." Earlier we discussed whether we should retain the special law or not.

Mrs. Hessler: I'm nervous about the special law, although perhaps we should permit classification.

Sen. Gillmor: Couldn't the legislature by general law provide classification?

Mrs. Hessler: It could provide alternatives.

Mr. Kramer: One thing the general assembly could do is provide alternatives within the general law; that regions that would want to exercise certain powers would have to have a form of government.

Mrs. Orfirer: We're not going to do that--we're saying that the general assembly could do that. Is there any reason for providing for the special law?

Mrs. Hessler: But if you said the general assembly shall provide for the form or alternative forms of government, then you give them a lot of leeway.

Mr. Kramer: The special law provision is probably the most flexible provision that there is. Well, it would equal the flexibility of the alternative provision.

Mrs. Hessler: It's the most flexible of all, but I don't think the legislature wants it.

Mr. Kramer: It's not something that would be done frequently.

Mrs. Orfirer: Why don't we use Iola's language--provide for the form or alternative form of government . . . that would provide all the flexibility that anybody needs.

Mr. Kramer: That really would be analogous to what we have presently with counties and municipal corporations.

Mrs. Orfirer: It would be what people are used to. Now we're down to the form of government. "The form of government of each region shall provide for an elective or appointive executive officer and for an elected legislative authority consisting of representatives"--now wait a minute--if we said the form of government of each region shall provide for an executive officer and for an elective legislative authority, wouldn't that be saying the same thing?

Mrs. Hessler: They might want to say, if the only thing you're doing is planning, you don't need an executive or that the chairman of the legislature shall preside over meetings. If you are going to have other powers, you might need a different structure. We've already given them a great deal of flexibility in providing for a form or forms.

Sen. Gillmor: I think that language is good if we really use it and really have a strong regional government that governs regions for all practical purposes. But the point that you make is a good one; it is not a good provision unless it rises to the level of being a strong regional government. If it turns out that it doesn't do much, you don't need this structure.

Mrs. Orfirer: Maybe we can do something along the lines "The general assembly shall provide for the government of each region in accordance with its powers . . ."

Mr. Kramer: No, I know what you are getting at but that's not the way to do it. There's no question that this is probably legislative in nature, something that you put into the constitution only if you feel that it's necessary in order to insure that regions are going to have this kind of government that we've traditionally associated with the state and municipal corporations. I think one of the considerations of the committee has been that right now planning and all these planning functions are probably the most removed and remote from the people and yet are getting to be some of the most important functions, and people really in effect have little or no control over what's going on and these should be truly responsible, workable governments and even if they are doing only planning and review powers, they probably would have a need for an executive in some form--somebody would have to be there on the job, directing a whole staff from day to day.

Mrs. Orfirer: A regional manager

Mrs. Hessler: And generally speaking, a staff that is responsible to a committee or a commission is not very successful.

Mr. Kramer: So it's difficult to say that even if they're only going to have the basic planning and review functions they wouldn't need an executive.

Mrs. Orfirer: From what we've heard today, those are the only powers they'll have.

Mrs. Hessler: Also, this business that was brought up today about having them elected from districts, in order to insure more control by the people. Of course, I don't think they should be elected entirely by districts. And when you're at a regional level, it's particularly difficult to elect by districts because the districts are so large that you really don't solve the problem of people participating.

Mrs. Orfirer: What would happen if we said "shall provide for an executive officer, and it would obviously have to be either elected or appointed, so I think those are unnecessary words . . .

Mr. Kramer: Those are really put in so that you can strike one or the other out.

Mrs. Orfirer: All right, so let's strike them out, and for an elected legislative authority. Now what would happen under that?

Sen. Gillmor: The worst that would happen would be another group of people on the ballot performing a function the people don't identify with. Maybe that wouldn't be bad if we envision that eventually the region would be a strong form of government. An analogy might be with the state board of education.

Mrs. Orfirer: Would we need to say elected, some from districts and some at large? What if you just stopped, saying an elected legislative authority. What would happen? What would the possibilities be?

Mr. Kramer: They could be all at large, all from districts.

Mrs. Orfirer: Why not let them fight about it in the legislature? I'm trying to take out some of the things that people are objecting to and saying we're setting out too much in here.

Sen. Gillmor: My personal preference is for the inclusion of at least part by districts, but I'm not sure that that's something that has to be in the Constitution.

Mrs. Hessler: What if we said that the legislature shall decide on the form of the authority? We've already said the legislature shall decide on the form of counties.

Mrs. Orfirer: What do we do to assure people that they will have district representation and not be swallowed up by the people all coming from the big city or . . .

Sen. Gillmor: It depends on how much protection we want to write in the Constitution.

Mr. Kramer: But if it's politically necessary, what then?

Mrs. Orfirer: The question is whether it would help it to get through or not.

Sen. Gillmor: Perhaps then it's better to leave it the way it is, since we all prefer the end result to be at least partly districts.

Mrs. Orfirer: I think we're all more comfortable with it this way, and we're using it in the public sessions. We have used it for what we originally intended it to be used for.



Mr. Kramer: District representation is especially important in a region like this though there probably would be no pressure for at-large elections anyway. It's hard to believe that either by charter or by general law you'd make provisions for them being elected only at large.

Mrs. Hessler: Is it possible to have them elected by counties, instead of the one man one vote? Because you do complicate things if you have legislative districts, congressional districts, county boundaries and regional districts. If you're going to do this, it should be based on legislative districts or something like that.

Mr. Kramer: I really don't know that you can achieve any kind of proportional representation if you elect by counties.

Mrs. Orfirer: If they sub-districted the regions for some purposes, they may use counties.

Mrs. Hessler: There's another possibility and that is to make it possible for most counties to adopt an alternative form of charter, and they set up these things. Maybe the regions should decide how they want to do this.

Mrs. Orfirer: You mean each region should decide how it wants to district itself?

Mr. Kramer: Well, it could probably, by charter, set up districts. If they don't like the ones that the general assembly sets up for them, they can adopt a charter and set up their own. If districts are going to be provided for, they'll have to be equal population districts--they could be all at large, but I think you could reasonably say that it is not likely that they all would be at large, but you have no assurance.

Mrs. Orfirer: Why don't we try just chopping it off here and if the legislature wants to put it back in, they'll put it back in.

Sen. Gillmor: Or the full commission.

Mrs. Hessler: There are good arguments either way.

Mr. Heminger: Perhaps we should leave the districts in for a while--at least we know we're going to be getting back to it and discuss it later.

Mrs. Orfirer: It can always be removed. It just may be something that it's important to us to have at this point. The only change is providing for an elective legislative authority rather than giving an option. All right. 3. Planning and Review Powers. "Each regional government shall be responsible for formulating, revising, and coordinating such plans as may be necessary for the orderly development of the region as a whole, or portions of the region encompassing or substantially affecting more than a single municipal corporation therein, and for regulating their development in accordance with such plans."

Mr. Jenkins: Who decides what's necessary for the orderly development of a region?

Mrs. Orfirer: The legislative body of the region, I presume.

Mr. Jenkins: They have the authority to decide on planning and review powers?

Mrs. Orfirer: Subject to a referendum of the people.

Sen. Gillmor: How about this sentence: "A region shall perform such functions and render such services as provided by law." Who makes that determination?

Mr. Kramer: The General Assembly.

Mrs. Orfirer: It was suggested that we add that so that the regions could perform functions assigned by the state.

Mrs. Hessler: I think that we should provide that a region shall only perform such functions and render such services as provided by law.

Sen. Gillmor: That may not be a bad idea.

Mrs. Orfirer: What would that do?

Sen. Gillmor: Well, I think when you get to the second part of that first point, here that language reveals the right to review applications for grants-in-aid, and there's revenue sharing and everything else. Maybe the Constitution shouldn't be so specific--who knows how federal grant-in-aid programs will be set up in the future? This was put in mainly to provide completeness and to show what was a reason for establishing regions.

Mrs. Orfirer: What happens if you just use that one sentence?

Mr. Kramer: That isn't the same thing as saying that a region may formulate, provide, and coordinate plans and regulate development in accordance with such plans. This is the matter that you've been very much concerned with, Iola, it's about a regional government having the ability to enforce overall plans.

Mrs. Hessler: This is why I want to ask you this question. If we had only that one sentence, would this constitutional authority give the legislature the authority to say that a regional government shall have zoning power as it affects regional development?

Mr. Kramer: No, I don't think so. I think that the region given just that power would be like a large county. It would have only expressed or necessarily implied powers. You have to relate the powers specifically to these regional matters. If we're talking about regulating development and, in effect, being able to insure that the regions are going to be able to resolve the disputes among subdivisions with respect to plans, and really to veto a plan that would take place within a municipal corporation but which would affect areas outside the municipal corporation.

Mr. Jenkins: In Georgia, the legislature created Atlanta as a county and gave them a device for arbitrating disputes among the subdivisions to control development.

Sen. Gillmor: The same thing has been true with the Minnesota set-up.

Mr. Kramer: As far as the review power is concerned, that's one that the regions logically would be given, and if they were set up, by legislation or by executive order. I think that behind the committee's discussions has been the idea that these regions would replace regional planning commissions and all of the other agencies, and that those powers really would be conferred upon the regions, including this so-called A-95 review power. And I think that last sentence probably has an additional power. The idea of it is to provide that the General Assembly would have the power to put, for example, sewer and water functions into the regional governments. It's really intended to make sure that you're not limiting the ability of the General Assembly to assign functions to the regions.

Mrs. Orfirer: Then why don't we just say that?

Mr. Kramer: Well, that's why I would say basically that this language "and shall also perform such other functions or render such services as shall be provided by law" should also be included to accomplish the purpose. I think that would accomplish this purpose, because aside from that provision, just about everything else we've done in the draft thus far really constitutes a direct grant of constitutional power to these regions and gives the General Assembly very little if any control over them once they are established. They would be very powerful and autonomous according to the draft as it is presently written. This would assure some additional measure of control by the General Assembly over the regions.

Mrs. Orfirer: Can we backtrack a little bit? What would happen if you said each regional government shall be responsible for the planning necessary or for the plans necessary for the orderly development of the region or portions of the region?

Mr. Kramer: Maybe you should say for the planning for the orderly development.

Mrs. Orfirer: Well, I hesitated to say for the planning because I don't think that anyone can expect the region itself to formulate all these plans. Is it possible to just say it shall be responsible for the plans--does that mean that it has to draw them all up itself or does that imply that it has regulatory and enforcing and review and coordinating powers?

Mrs. Hessler: If you gave them the responsibility for making the plans, what may happen is that, for instance, the OKI had no staff, hired the Hamilton County Regional Planning Commission staff to do the planning and got a contract.

Mr. Kramer: This is really, in dealing with the region as a whole, limiting language, then, on the planning power.

Mrs. Orfirer: 4. "Power to contract with other states, regions, political subdivisions or units." This is necessary.

Sen. Gillmor: I wonder if that is constitutional under the U. S. Constitution--about contracts between states.

Mr. Kramer: This hasn't been regarded as interstate compacts. We've got already a provision in the statutes for adjoining school districts to put on to the state boundaries. The contracts are between local and municipal governments.

Mrs. Hessler: You can have contracts on air pollution control.

Sen. Gillmor: Certain things require interstate contracts and Congressional approval.

Mrs. Orfirer: Maybe if it were a problem, at least it's enabled by our state constitution and then you can go on to get federal approval. "A region may, upon such terms and conditions as may be agreed upon by and between the region and any one or more political subdivisions or units within the region, or any state or political subdivision or unit of any state". This sounds like a contract.

Mr. Kramer: It's a complicated provision but we'll just have to simplify it a little. So that we're talking about any political subdivision in the region or any state or unit in a state which is contiguous to the region. How do you describe the state or political subdivision or unit contiguous without saying what it is.

Mrs. Orfirer: I think your order is what's making it so complicated. If you say a region may perform any function or render any service and then go on from there as to with whom, I think it will simplify it.

Mrs. Hessler: Any state or political subdivision or unit which such state or political subdivision or unit may perform or render.

Mrs. Orfirer: Change the order to say a region may perform any function, or render any service, and then go on to spell out with whom then you will have less repetition of words and complication.

Mr. Kramer: You can't say a state which is contiguous to or in the region.

Mrs. Hessler: The state can be contiguous to a region.

Mr. Kramer: But it can't be within.

Mrs. Orfirer: "to any state or unit within the state or unit which is contiguous.

Mr. Kramer: What about those that are within? A state can't be "contiguous to or within".

Mrs. Hessler: But it is either contiguous to or within.

Mr. Kramer: But you can't say a state which is contiguous to or within.

Mrs. Orfirer: To any state which is contiguous or to any political unit which is contiguous or within. That way you aren't repeating.

Sen. Gillmor: Is there any check included at all in the provision on the power to contract?

Mr. Kramer: No. The broad constitutional power, now, is for municipalities and townships to contract with counties to turn over to counties any of their powers. But not counties in another state. That's constitutional--Article X, Section 1, municipalities and townships shall have authority with the consent of the county to transfer to the county any of their powers, under such regulations as provided by general law, but the privilege of initiative and referendum shall be secured to the people of such municipality or township in respect to the making of such transfer and to the people of such county in respect to the giving or withdrawing of such consent. You can say under regulations provided by general law, but the General Assembly can't prohibit it or cripple the power. There could be a provision put in this section making this provided by general law but that would seem to be too sweeping because then the General Assembly would be put in the position of having to make provisions for what the contract would include.

Mrs. Orfirer: Under paragraph 5, the region can step in and take over a power. It's a larger power than in 4.

Sen. Gillmor: It's a limited power. I'm not sure I agree that the power in 4 (contract) is less than the power in 5 (assumption of functions). There is a check on the power in 5. Let's go to an absurd situation. Suppose two regions agreed to form a standing army. What, under the language in 4, would prohibit this?

Mrs. Orfirer: Because it can only be a power that such state or political subdivisions or unit may perform or render.

Mrs. Hessler: They haven't got any powers to perform anything yet, except to make plans. I think it's clearer to people if you start by saying: Number 1, they have planning and review powers. Or in addition they have powers to perform a functional service. And then in addition, they can contract with other counties to perform them for them or to have them perform them for them.

Mrs. Orfirer: In that vein, I would like to clarify this, because maybe I have been seeing this wrong. And if I have not been seeing this wrong I think it is important that we all understand it. Number 5 provides that without the consent of the smaller units of government, the region may go in and assume a power it deems necessary--a function it deems necessary, subject to a referendum. We've already stated in 4 that it has a power to contract to perform a function.

Sen. Gillmor: You're just saying that they don't have any real power under 4, that they haven't assumed in 5.

Mrs. Orfirer: Exactly. Is that correct or not?

Mr. Kramer: There are 2 different ways under this provision that a region could carry out the function of providing for services throughout the entire region or throughout an area of the region. One would be for the region to enter into contract with all of the political subdivisions--all the counties or municipal corporations within the region which have sewer systems, and the region would take them all over and operate them--that's one way. But if they didn't agree to it, the region has the power alternatively to declare that it is necessary to take this over, hold a public hearing, and then do it, and . . .

Mrs. Orfirer: That's why I was saying that 5 has greater powers than 4.

Mr. Kramer: Yes.

Mrs. Hessler: Except for planning powers, you are not giving the legislature the right, then, to define powers, are you?

Mrs. Orfirer: That's what we were discussing under #3.

Mr. Kramer: That's that last sentence in 3 that we talked about putting into Section 6, to make it clearer.

Mrs. Orfirer: They are evolutionary steps. You can go planning and reviewing, or you could enter into a mutual contract, or if none of these three work and there still is a need for a function to be performed regionally, you can go in and take it over. But it definitely is a progression of powers.

Mr. Kramer: And also the necessary provision for regions to be able to contract where they have to cooperate in a particular area.

Sen. Gillmor: This makes a lot more sense now. You start out with regional governments, and progress to a multi-regional government, in essence. Now after two regions agree that between themselves they are exercising that same power, then you really have a multi-regional power. In other words, you have one power exercised over four regions--then it's hardly one power. It may be . . . let's say they take over the sewer and one or two regions contiguous with it--and they agree to set up a multi-regional commission to regulate that--and then you would have in essence a state service, in a way. You're bound to get what is almost a mimi-state.

I just think that we should talk about the things that may not come about in 15 years, probably, but maybe in 30 or 40 years, after the regions have become strong, and they really start to become powerful. I don't know.

Mr. Kramer: Air pollution control is an example where you expect that it might be necessary for more than one region to get together.

Sen. Gillmor: After the region has assumed power within its region, then you see, you've lost any check. And when two regions have both assumed the same power, then they can, in essence, put their powers together over an area that comprises two regions, or three regions.

Mr. Kramer: The General Assembly can revise the boundaries.

Sen. Gillmor: I know it's hard to imagine in ten years, but it's after that.

Mr. Kramer: So this would be an argument again for finding a veto power in the General Assembly over the contracts.

Mrs. Hessler: Paragraph #5 has to have a lot of thought about whether the state should have the power to determine the functions of regional government or whether the regional government should have the power subject to a veto of the state. Depending on how you solve that problem, it then depends on the contracts.

Mr. Heminger: The power of the legislature to change the boundaries of the districts might conflict with the contracts.

Sen. Gillmor: The more powers they have, the more powerful they get.

Mr. Kramer: That's why I said that you might revise the boundaries once, but it's difficult to see that it's going to happen after that without some very good reason. It's not going to happen lightly. We'll have to give some more consideration to this question in order to decide if there should be a veto power over contracts, because there's no question that it is a good point that the regions that are going to enter into contracts--it certainly is potentially a more serious matter for the state than say counties or municipal corporations which enter into contracts. Those would be the important contracts, really, because otherwise, if they can't contract together, then you run into these same kinds of problems that we've got now. Now we're talking political boundary lines, and so on.

Mrs. Hessler: Now, the Twin Cities Council actually has certain authorities to handle certain things--for example, they may set up a transit authority, and the transit authority will run the transit, but the region and the council have the control over the budget and that sort of thing. So that they control and coordinate all the authorities for the counties in the area--but the authorities are still there. If you solve the problem of having different boundaries set up for water control, air pollution, and so forth, you almost have to have the power to contract in order to set an authority to do this with an overriding coordinating function.

Mrs. Orfirer: Does this answer your problem? Supposing that you say that the regions must contract for a specific purpose or services, but that they may not combine their governments or their structures.

Mr. Kramer: They don't have any power to do that anyway.



Sen. Gillmor: No, they don't have the power to do that anyway, but they could agree, for example, the Port Authority of the State of New York has a bi-state contract. It is actually autonomous. It's not under any actual control of New York or New Jersey. An agreement for function between regions might be the same thing. And then I could foresee that you start out with very limited authority, and then when you get more bi-regional things, it's a natural thing to put it all together. I think realistically they could become somewhat autonomous.

Mrs. Orfirer: In some ways it certainly provides for a lot of flexibility.

Sen. Gillmor: Yes, but it doesn't provide for much state control or much popular control.

Mr. Kramer: You could provide for a legislative veto in the contract section with the addition of very few words. It might be a power that would never be exercised. There would seem to be no great arguments to make against it, and there could be a possibility that this kind of problem could arise.

Mrs. Orfirer: It's a very valid point.

Mr. Kramer: It's not going to hamstring the regions anyway, because the General Assembly will pay no attention to 99% of the contracts, but if one comes along that would be of concern to the state, it would have the ability to stop it. I think it might be a reasonable addition to make.

Mrs. Orfirer: I think it is primarily Section 4 that we would like to see re-drafted, I think we'd like it spelled out a little more clearly the fact that it is a progression, an evolutionary, gradual assumption of powers.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
November 8, 1972

Summary of Meeting

The Local Government Committee met at the Hollenden House in Cleveland at 10:15 a.m. on November 8, 1972. Present were Mrs. Orfirer, Chairman, Messrs. Ostrum, Heminger, Russo and staff member Kramer. Also present at various times throughout the day were Leila Shiozawa, Gilbert D. Richmond of the Greater Cleveland Growth Association, Wayne C. Dabb, Jr. of the City of Cleveland, Joyce M. Wallace of the League of Women Voters of Cuyahoga County, Prof. George D. Vaubel of the Ohio Northern University College of Law, Estal E. Sparlin of the Citizens League of Cleveland, Pat Smith of the Air Conservation Committee, William Keen, Stark County Administrator, Prof. Thomas Campbell of Cleveland State University, Richard D. Peters of the Cuyahoga County Port Authority, Max Ratner of Forest City Enterprises, David Goss of the Five County Transit System, Ellen Knox of the Recycling Council of Greater Cleveland, W. O. Walker of The Call and Post, Jack Gherlein of the Greater Cleveland Growth Association, George Watkins of Three Rivers Watershed and Lloyd Stoyer of Trumbull County Area Betterment Council.

Mr. Dabb: I think you already know that the Mayor is on record. When we talk about his approach to regional government, we have to look at the historic role of the city as a basic unit of government in both the United States and in the world. The cities existed before there were states, before there were counties, before there were nations. The cities sprung up where people gathered together in groups probably since the beginning of man. So that when you talk about a regional approach to government, I think you have to keep in mind the basic unit of government being the city and I think we have to start building from that point. I think the Home Rule Amendment of the Ohio Constitution back in 1912 recognized that the city was a basic unit of government, but the powers of the cities have been taken away from them, possibly unknowingly, by the state and by the federal government was an attempt to return the powers to the cities and this was fine, I think, at that point in time where the cities--the political concept of the cities--comported with what was then the reality of the city geographically, demographically, economically, culturally, socially, ecologically, even as we are now realizing. But I think over time, and particularly with our big cities, the reality is expanded and the political concept has not expanded to keep up with the reality, and there we reach the point today where the problems of the city is asked to deal with go far beyond its own boundaries and beyond its own powers to deal with them. I think the suburbs are starting to feel the effect of the overflow of the problems of the central cities into the suburbs and maybe out into the more rural areas of the county. At the same time, the federal government is starting to turn its eyes back to the cities as a basic unit of government for solving problems. We are all familiar with revenue sharing, which basically gives money back to the cities, also to counties, to the states, but primarily it gives money back to the cities so that they can deal with the problems.

I think a major problem, lies in what is our concept of the city and this is where we get into regionalism and metropolitan government. I think that everyone here, from your studies, and the rest of us all know, that there has to be some change in the city, a broadening of what we know now as a city, if we are going to solve many of the problems and revitalize local government. I have reviewed your proposal and I think I might first state Mayor Perk's goal or views on this point. His view is that what we need is better government and not necessarily just more government, so the city should be the basic building block for our expansion of local government.

When you compare the city to your regional approach this is where we can start making some specific comments. Basically, as I understand the proposal, it is to create another level of government, a sort of super city or super county somewhere between the city and the county and the states and yet with some substantial powers which have been, I think, sadly lacking in some of the attempts in the past for planning-type governments such as NOACA or regional planning authorities. At the same time, has some of the deficiencies which they also have, in that it is somewhat limited to a planning function, a regulatory type function without having all of the basic powers. It does not appear to have all of the basic powers that the city would have. I think also the proposal provides that over a period of years whenever the region is ready, it will take on additional governmental functions. Experience, not with this particular proposal, but with similar types of governments, shows that these proposals don't always work out in practice. People are loathe to give up their own little areas of power. Everyone likes their little kingdoms. These do not fall easily. If we are going to go to the trouble of a constitutional amendment to revitalize and restructure local government, we should aim for what we view as the ideal as the constitutional amendment and make an all out effort rather than shoot at what Lyndon Johnson would call the half loaf theory of--getting a little bit now and we will try to get the rest later.

Mrs. Ordler: I am happy to hear you say that, because that is the philosophy that we have been working under. We will try to come out with a proposal that will provide the best amount of good government that we can get. If it is called idealistic, we are at least going to aim that high to begin with and then, if it has to be compromised a bit along the way, it will.

Mr. Dabb: I might make a comment specifically. Sections 3 and 6, as I understand them basically, provide that regional government will have regulatory and planning functions and then it will also have the necessary and proper powers to carry those out. I would say why not give regional governments the same powers of local self government that we have given to the cities, so that they can really carry out what we want them to do. Along the same line, when we get down to Section 5, this is where the region may at any time assume various services and functions. At this point in time this is no question that certain governmental functions or most governmental functions need be provided on a regional basis. The question of whether they may do it is may be outdated. Maybe we should say they shall provide certain functions and establish a time schedule over which they would consolidate all of the functions within their areas. Right now we are plagued with a multitude of

independent authorities and we are seeing more created. I don't fault the independent authorities, such as the sewer authority and the transit authority. These are very good and very necessary. We have to create independent authorities now, because that is the only way we have of dealing with regional problems, but if we are going to try to establish a governmental framework to deal with regional problems, then we ought to give them not only the power, but also provide a time frame--maybe a flexible time frame, of course--in which to take over these services and to consolidate them. Also, I think we should provide that the independent authorities, boards and local governments providing these functions will all go out of existence at the same time that these functions are taken over by a regional government. Something along this line would give more substance to the proposal to establish regional governments and will carry it farther than the NOACA or regional planning unit. It will make it a regional planning unit with teeth only to accomplish its goals.

Mrs. Orfirer: Do you want us to respond to you now? I didn't know whether you finished your formal statement or not.

Mr. Dabb: Yes.

Mr. Heminger: You just again mentioned the possibility of some units or some functions going out of existence. What was the phrase you suggested that might go out. Assuming that this regional authority was given?

Mrs. Orfirer: The special authority?

Mr. Dabb: Special authorities I think should be abolished as a regional unit takes over the function. I think even local governments to the extent that they have no other existing functions.

Mrs. Orfirer: Our thoughts on this have been primarily the desire to retain as much flexibility as possible and the thinking was that if the whole state were to be regionalized that there would be different problems, in all likelihood, in different areas of the state, so that rather than provide that immediately or in 2 years or 5 or 10 years from now that all of the regions must take over certain functions such as transportation, or air pollution--we all are aware of some of the regional problems that exist--that they would be free to take them over in their particular area where the need was very clear where they were not being handled as efficiently or with as much good to the people of the area as would be possible at a regional level. At the moment our feeling has been that we didn't want to impose it across the board or at a specific time, but give them the power to assume the function when it became apparent in that area that it was necessary that it be assumed.

Mr. Dabb: I think the flexibility you are talking about has a great deal of merit. When you are dealing with a state as broad as Ohio and try to set up some system which will accommodate all of the differences across the state, you do have problems. But I think still that if you allow them to take them over when they can or when they will, political problems are involved, and conflicts among the different groups of people

become somewhat insurmountable, sometimes. Perhaps an approach which would make an evaluation on a region by region basis once the regions are established, might have some merit. But I think there needs to be more than just a permissive ability to take over functions.

Mrs. Orfirer: I wonder what your reaction is to the thought that these would be very different from existing regional groups such as NOACA where the individual unit of local government is represented on it. Our thought with these regions is that this would not be so--that people would not be appointed to it or even elected to it because they were mayor of a municipality or something like that. Representatives would be elected region-wide in some one-man, one-vote fashion so that they would have a broader responsibility and perhaps some of this competition and factionalism that you are talking about would be alleviated.

Mr. Dabb: I think along those lines you do have a problem--I don't think you will ever get away from the problem. There are large blocks of voters in areas such as Cleveland. I don't know how you would draw an area broad enough to eliminate the influence of an area like Cleveland, so that while the Mayor of Cleveland or the councilmen may not serve because he is Mayor or councilman, still the same person might be elected because of his views and his acceptance to the city of Cleveland.

Mrs. Orfirer: I am not sure that this is bad.

Mr. Dabb: That may be good.

Mrs. Orfirer: I think certainly a city with the population and the needs and the strengths of Cleveland should have great representation in the region in which it exists. Perhaps what we are going to run into is the fear on the part of other smaller communities that they would be overshadowed by the larger city within the district, within the region. I think this may be a problem that will have to be faced, too.

Mrs. Ostrum: I have a question I would like to ask of Mr. Dabb. We, of course, have had some public hearings in Cincinnati and Columbus and I believe in the Columbus hearing the Ohio Municipal League was represented by its chief counsel.

Mrs. Orfirer: Mr. Gotherman.

Mr. Ostrum: Mr. Gotherman. One of the points that he was making was, since we are a Constitutional Revision Commission trying to determine whether anything needs to be done to improve the constitution, is whether regional government should be detailed in the constitution itself. I take it, from what you have said already, that you don't feel that it is inappropriate to have the kind of rather detailed proposal for regional government that this Committee is considering at this time. Mr. Gotherman, I think, was suggesting that there is no real legal impediment existing at this date to prevent the general assembly from establishing regional government. He raises the question whether is it necessary to structure this new unit in the constitution. Could you address yourself to that subject? I think I know what you are thinking, but I would like to have it spelled out.

Mr. Dabb: Okay. I think Mr. Gotherman is quite correct. I don't think there is any necessity to have it spelled out in the constitution and it could be done by the legislature. But I think the constitution is basically a charter of government. I think it is essential that it be spelled out in the constitution what the government structure of the State of Ohio is going to be. It then makes it more difficult to change and puts in the constitution what the people wanted in the constitution and does not allow the whims of passing fancy or political ties to change that quite so easily. That is the basic merit of having it in the constitution as opposed to having an act of the legislature. Of course, some flexibility should be built in. I notice you have throughout, "there shall be provided by general law" to allow some flexibility to meet changes which are necessary.

Mrs. Orfirer: We have been conducting these hearings very informally so that anyone who is present can speak at will and that the other panelists will interact with each other and rather than just have a formal presentation. We would like all of you to take part and we would like to welcome you, Pat. Pat is with us here for Ann Felber this morning and we are very glad to have you. So won't you all please talk back and forth with each other.

Mrs. Smith: Mr. Dabb, if it should so happen that the regional approach was not instituted--in other words if a regional government proposal was not acceptable to the state legislature, not acceptable to the people, is the city of Cleveland at present in its administration leaning towards constantly trying to educate the public with the metropolitan situation? Do you think the city is the center of this power of government which you talk about? Or would you rather not commit yourself?

Mr. Dabb: I don't know what I could say that the City is specifically trying to educate the public to this sort of view. I think when you have got a city the size of Cleveland that you basically try to solve problems by putting out fires right now and it is hard for someone in a city government to take the long range view of what the city ought to be. In the past few months we have established the regional transit authority and the regional sewer authority and we have worked with the County on the Justice Center project. We have always tried to insure that the City of Cleveland has a major role in all of these regional authorities. I think this is necessary because the City of Cleveland is still the biggest population center in the county and is the most established. It has the basic governmental services fairly well developed and it was the fundamental government in this area for a long time. The City has outgrown its political reality. That's where our problem lies, and I think the Mayor has said that metropolitan government is what we are going to have to have in the future and the City will play a big role in it.

Mrs. Orfirer: Are there others of you who would like to respond to Mr. Dabb? We hope that you will be able to stay with us, Mr. Dabb, and continue to talk to us as we talk and listen to other people. Pat, would you like to explain a bid about how the Air Conservation Committee is working and about how it views regionalism and what our specific problems are.



Mrs. Smith: Yes, I was thinking that I had better explain what our experience is. The Air Conservation Committee, Ann Felber and I have been working specifically for about three years. We looked at local government efforts in this area and it took us no longer than a year to decide that the city boundaries are not large enough to cope with the air pollution problem in this area. When we considered what other options there were besides the state, under the existing arrangements, we looked to the county boundaries and decided that the county probably is large enough to cope with the air pollution problem. We considered various ways to get authority for the county. Right now there is none. We attempted in various ways to get legislation to enable counties to handle the problem, but we did not accomplish this and have not managed to extend air pollution controls beyond the city boundaries.

When Ann and I talked over the regional proposal, we probably came up with more questions than answers for you. We had not considered regions very much when we initially began to think about air quality regulations. We do reside in an eight-county air quality region set up by the Government. We decided that was too large and that it had to be broken down into smaller geographical areas to be able to cope with the problem. The eight-county region includes Stark County; it includes Lorain County. We saw that there were urban and rural problems there, and we couldn't see working under existing state government. When you pose such a thing as regional government, then I have questions for you.

As I read this material and the intent of your proposal, you are talking about elected officials. You are talking about a tax base. You are talking about some flexibility as to the authorities each of these regions might pick up. My reservation about this is whether, when a region picks up a certain kind of authority, do they pre-empt the authority in that region? I think that's what the intent is--that if an established region wanted to do air pollution control work, it could impose it on all of the municipalities and jurisdictions within the region. Was this the intent?

Mrs. Orfirer: Yes, it could impose it; but the intent was not necessarily to obliterate or wipe out those agencies that existed if they are performing and providing good service and adequately functioning, then they could continue, but under the umbrella of this wider regional government. It would be done with planning and coordination.

Mrs. Smith: Of course, this is a whole different thing. I can see this possibly working, if the regional agency definitely has the authority. There is far too much home rule and provincialism in this area to try to put together an organization of governments. The reason we went with county government rather than with health departments was that we could see that a very small township could knock out a county effort under a health district because the county would have to get permission and contract with the township. You cannot do these kind of functions area wide if you have to contract.

We had thought that county boundaries would be adequate to solve this problem, even in this area, which is probably the largest metropolitan area in the state. Our question is, what is there that a region could do that a county could not do given the same kinds of powers you are talking about giving to the regions? The obvious answer is long range planning over the larger area, and this is probably the only benefit of a region over the county. From our standpoint, this is perhaps not as important as it would be in some other areas, because we really feel there would be enough authority in the county. Of course, you could stop this proliferation of so-called area wide agencies which are duplicating functions, as you know, unendingly. It simply is impossible to work in some of these areas while having to keep track of five or six agencies and authorities.

Mrs. Orfirer: Pat, what happens in the case where one county would exercise the kind of authority you are talking about to control air pollution and an adjoining county would fail to exercise the necessary power?

Mrs. Smith: I suppose you would have the same problem that you would have with regions.

Mrs. Orfirer: Yes, but the region would cover a larger area.

Mrs. Smith: The cities may have originally been large enough to deal with these problems, but since we have put suburban rings around our cities, the problems have grown out beyond the city boundaries. The one main argument that we have for going county-wide rather than remaining within city boundaries is that, even though most of the industrial complex is contained within the city, we feel that we needed the larger tax base to cope with the problem. It is ridiculous to ask the City of Cleveland residents to cope financially with the problem created by this industrial complex from which the whole county benefits. I suppose you could take my argument and say that the regional approach would be better because it would have an even larger tax base. The problem can extend beyond the county, and perhaps many people from outside the county work here. I think counties would work if you give them the power.

Mrs. Orfirer: What I was concerned about was the problem where a factory is located just outside the county line. We usually think of air as moving about without controls and across boundaries.

Mrs. Smith: You can always have that sort of problem, too, with a factory located just across the state line. That is why we have federal laws. The answer to your problem about a region or a county that does not enforce the standards is that there are state laws and they are strong, and I don't see any answer to that sort of problem except to have federal laws that impose uniform standards across the country.

Mrs. Orfirer: How effective do you find the federal and state laws governing air pollution?

Mrs. Smith: We can't tell because they are just beginning their enforcement program in Ohio. It looks good, mainly because the officials in charge of this program want to do a good job. I suppose we are looking to the new state EPA and expecting miracles, and the public will look to this new agency also. The federal act has made Ohio move, and Ohio is attempting to make municipalities move. A problem exists in that the state agency does not have the money or the people to control air pollution here. They will be contracting with the city to do the work here. We know that the state can't do the work without utilizing the city, and yet city residents are paying to keep that division alive so that the state can contract with it, and we know that there will be plenty of city money going into it. We have serious reservations about this whole thing. I do believe that in an urban industrial area such as ours, there will always be a need for local money to be put into the state program. I don't think the state can manage to pour enough money into here to do what we think must be done.

Mrs. Orfirer: What about federal funds?

Mrs. Smith: The federal funds come if you have an adequate program. The state won't get money and the local community cannot get money unless the local program has complied with the state program and the state program is acceptable under federal standards.

Mrs. Orfirer: Mr. Keen, would you like to talk to us about some of the problems and solutions that you come up with?

Mr. Keen: I think it is important in anything like this to know a little bit about the background of the person. I am a native of Stark County. I have lived there most of my life. I have been involved in strictly local government for probably 25 years. My employment until 1960 was industrial. I served as Mayor of Massillon for about 5 years and then I became the first county administrator in Stark County. My approach may be pretty provincial because I have not a broad knowledge of municipal and county government all over the state, except as I have been exposed from my activities within Stark County.

When Mr. Kramer invited me to express my thoughts on regional government, I was somewhat aghast because, very frankly, that's your job. He supplied me with a draft of the amendment that you are using as the working device and I guess that stimulated my thinking. I would like to just give you a brief formal statement about my thoughts on a regional-type government, recognizing, of course, that this is not a constitutional amendment that you are prepared to propose to the electorate.

A little bit about Stark County. Canton, Ohio, is the county seat. We have a population of 374,000. The county is the 7th largest in the state. We have 5 cities and 9 villages. About 50% of our population, almost half is in the unincorporated areas of the counties. I was amazed to find that our population density in Stark County is 680 people per square

mile. When I was a kid in elementary school, they told me that about China. Most of us have the feeling that our county is urban and metropolitan. Perhaps the most recent thing that has happened is rather staggering and yet challenging. Downtown Canton has been literally rebuilt and in the immediate townships to the north, at a place called Belden Village, Higbee's moved in and it is a fantastic operation. In downtown Canton, most of the prestige stores have moved out of that area. Our sheriff is now confronted with urban problems in Belden Village, such as the Canton chief of police is confronted with in downtown Canton. This is the sort of thing that is happening in our county and perhaps in many other counties.

I guess I have to say first that I am somewhat concerned that from the little bit I have read about regional government, this draft of an amendment seems to be addressed primarily to adding another layer of government to the local governments that we have now, and if I may use the draft that you have simply for comparison purposes, it seems to me that it is directed toward establishing a modernized super county--if I can use that word--but has the potential of emasculating the existing local governments, but still leaving them there in some function or other. Very frankly, I can't imagine the electorate passing an amendment anywhere near this draft. I just don't think it would pass the electorate in Ohio. I am concerned that no draft seems to have surfaced --not necessarily of this committee, just general literature that I have been exposed to--to try and modernize and remedy and regionalize some of the existing forms of government, rather than approach putting another layer on it.

Mrs. Orfirer: May I interrupt you just a moment? I want to be sure I understand what you mean. You don't mean only modernizing county government or strengthening it, but changing the boundaries, combining counties--that kind of thing?

Mr. Keen: Yes, I think perhaps that may be it.

I don't need to really tell you very much about the inadequacies of county government today in Ohio. It ought to be noted that county government in Ohio was created when we were an agricultural, self-sufficient economy, so to speak, and the people in Ohio at that time really didn't need and, I suspect, didn't want very much government in terms of the sort of thing we are talking about. Our county boundaries were pretty much established so the men could go to the county seat and return between milkings in transportation which existed at that time. Since the form and structure of county government was established, there have been revolutionary technological and social changes, but the county government is still pretty much what it was when it was first established. There have been some additional powers granted to the counties, but I suspect if this group sat down to design an organization that was almost designed not to work, you couldn't do much better than the county government structure today. If we were to apply the measurements under which county government was first established in Ohio to today's culture, I think we might find or at least establish as a premise that the state government in Columbus would suffice of that maybe ten super counties would be something that we would try to design.

Here's what I would like to suggest very briefly. The state is confronted with federal regulations which will require regional planning. I understand that has to be somewhat established by the middle of next year. It seems to me that Section 3 of your draft addresses itself to that, and over and above that I would like to suggest that you consider modernizing and developing the county structure so that it would gradually produce something like a regional government. It seems to me that this would require most of the following elements. A constitutional authority for the general assembly to classify counties and to provide separate general laws for each classification and separate alternative form of "organization and government" of each classification. Perhaps urban and rural classifications could be used, with the option of rural counties to petition the general assembly to be classified as urban, and I use these terms loosely-- it could be one of the two, a and b, or 1 to 25, if that would be the pleasure of the legislature. Constitutional grant of home rule to all counties regardless of classification. In urban counties, however, they may be classified, basically I think roughly in those counties with 100,000 population or more. That the constitution require an elected or appointed chief executive officer. I am more inclined to suggest persons be elected rather than appointed and an elected legislative authority by districts. To remove some of the horrible constitutional charter requirements for county charters and make it possible with a new constitutional amendment for counties to make changes from "organization and government" statutes by their own legislative action subject to initiative and referendum and giving the general assembly a limited amount of time to amend or to become so that it would work somewhat like it does at the federal level where there is an executive reorganization subject to the disapproval of Congress.

I think in my lifetime the efforts I have seen directed towards charters for counties and alternative forms of government for counties places an almost impossible burden on those efforts. Number one, you have to tell the people what to have because county government has such a low profile and such a fractured structure that the average person simply doesn't understand. I don't think even the schools are doing a good job of getting the story across about the kind of government that they are going to be exposed to in Ohio at the local level. Admittedly, they have many many things to acquaint those youngsters with, but this is something they are going to live intimately with. Make it easy for counties to consolidate into regional governments. Now, I would like to hope that if such constitutional amendments were in effect this might stimulate and encourage the general assembly of Ohio to take the same approach as the feds and that is that the general assembly might offer certain benefits and certain additional authority could only be obtained if these counties through this kind of transition would agree, enter into contracts, combine or consolidate with the counties. We are almost at the point where the federal government says you have to do this in Ohio if you want any more of our money as far as planning is concerned. I think the general assembly would take this same kind of approach if you had a viable county organization. Make it attractive for them to combine with other counties into a region. I think that there would be at least a possibility that there might develop naturally into something close to what we are talking about in regional government with this kind of an approach, without adding another layer of government and I submit that with much more chance of the electorate of buying it than they would a regional government superimposed over what we have now. That concludes my sort of semi-formal approach to it. I haven't really thought out all of the nuances of it. I am stimulated by the draft of the amendment.

Mr. Keen: I don't know whether the committee would want to consider this or not but it rather intrigues me to permit the county commissioners to adopt a charter or alternative form of government without a vote of the electorate, but subject to referendum. Consideration should also be given to transferring the entire operation of the courts out of the realm of close county control. It is an absolutely impossible situation, at least in the metropolitan counties where the courts can mandate without any consideration whatsoever of the other obligations of government and I think I have arrived at the point personally where I subscribe to their being administered totally by the state, financed totally by the state, and all the revenue they produce returned to the state. I think that is about the substance of it other than my own experience has been that the multiplicity of boards and commissions at the county level is a horrible thing. Just to give you a very recent example. Our Board of Trustees of the tuberculosis hospital hired a phony doctor. We just went through an election where the challengers to the county commissioners ran newspaper advertisements to the effect that the incumbents didn't know any better than to hire a phony doctor at the tuberculosis hospital. Obviously the commissioners had nothing whatever to do with it. They had appointed boards of trustees. They are totally removed from county government and financing and fiscal control doesn't even run through the office. It had its disadvantages. The board of trustees were so much upset that their president ran a newspaper ad saying it was their fault and not the fault of the county commissioners.

Mrs. Orfirer: It is just a complete ignorance really of what the county government is.

Mr. Keen: I would suspect that most of the boards and agencies that exist in the county level could very well be line departments, with the department head responsible to the chief administrative officer or the county commissioners. We don't need a Soldiers and Sailors Relief Commission. We don't need a tuberculosis hospital board of trustees. I think there might be something said for an advisory board when you get into something that is extremely technical and I think most administrations would recognize this.

Mrs. Orfirer: I just would like to ask you one question Mr. Keen, if I may go back to your suggestions as to how regionalism should come about. As I read you, you feel that there is a growing trend toward regionalism, a greater need for regionalism of some kind, but you feel that it could better come about through a strengthening of county government until they evolve into regions. Do you feel that it would be more practical or feasible to actually eliminate existing counties than it would to have a regional government that was more than a coordinating body--planning body.

Mr. Keen: I am not sure I understand the question.

Mrs. Orfirer: I think you felt that it would be impossible to get the electorate to pass a proposal such as the working draft we have been discussing, that it would happen as a natural evolution growing out of strengthening counties. I think that many of us do feel strongly that it is vital that some functions be regionalized and we have rather grave doubts, perhaps, about the possibility of it coming about from underneath rather than from the top, and a concern about the reaction of the entrenched people in existing local governments.



Mr. Keen: I think one thing that we all can be concerned about, at least in our area, is that the real political organization of its structure is revolving around the county level rather than at the municipal level. This is something we have to be careful not to destroy regardless of your party affiliation. We have to have this sort of thing. The last vestige of it in our county is, very frankly, at the county level. I am somewhat concerned that a strong overnight regional government might destroy an awful lot of men. If I may go back for a minute, it is difficult to imagine this sort of thing happening, even having proposed it. We can't see this in county government today. County government is run by a committee. Nothing works run by a committee. Somebody has to be in charge. There are counties that won't subscribe to this for sure. They don't want any more powers. They don't want to be modernized. They don't want to have any structure that is streamlined for action. I think you find more sympathy among the urban counties for something like this, because they are constantly pressuring the legislature, if nothing else, to give them authority to meet appropriations for a symphony orchestra. But I do think it has some merit in that you say here is an existing unit of government with which there is some identification, which there is some loyalty and from which certain things happen. We are going to get us an authority, they may not like it but municipalities have grown up under this authority, and people my age have never known any different. They had it all the time. Give it a strong structure, give it home rule and the power to do something about meeting the needs of their people, and I think you will find an enormously different kind of leadership coming out of county government.

Mrs. Orfirer: Would you give them preemption over the municipalities?

Mr. Keen: I don't know. I am not qualified to answer that. I think it would be a very interesting study. Part of our push toward regionalism is that the problems starting in the municipalities are going out and the ones out are coming in. The rather arbitrary corporation lines are meaningless.

Mrs. Orfirer: It is interesting that as we have gone around the state, we meet these two ideas that come into conflict with each other and seem to co-exist in everyone's mind. The committee has been very much aware of this strong attachment to a very local level of government from townships and villages and cities, a feeling that they do perform a very necessary function and that as we go into regionalism to maintain still this local quality, this almost neighborhood quality, of government. A lot of people are interested in maintaining and it is going to be interesting to see how it finally takes shape between these two forces.

Mr. Keen: I would like to ask a question. I am not sure I really understand it or are interpreting it properly. Did I understand the draft of this article that the legislative authority of the regional government could on its own initiative propose to take over, for example, sewers in the whole region?

Mrs. Orfirer: Yes.

Mr. Keen: That this would be subject to referendum in each of the existing subdivisions?

Mrs. Orfirer: Within that area of the region--you know we have talked about subdistricting a region, too, and so presumably one subdistrict or a consolidation of several subdistricts, and then the referendum, as I see it, would take place within those areas.

Mr. Keen: Take these subdistricts within an entire region for the consolidation of all sewers under the auspices of the region subdistrict. Suppose in that area you have a fairly good sized municipality with a lot of suburbs. What happens if a key township says, we don't want it as far as the sewer program is concerned? You might visualize there might be a township in there that contains major sewer lines or even a sewer plant.

Mr. Russo: The fact of the matter is that the regional concept has the authorization to buy at a figure that is attractive to the municipalities and we have to know the operating of the state constitution. You just don't go in and seize power simply because it is going to be the best way of doing something. A referendum is something that is guaranteed, so you have to follow that. What we are trying to do is eliminate the issue of carrying in every municipality and by majority in the biggest city and simplifying it to the point where the people still have the right to reject. However, the bargaining at the table in the price of the concept can be easily done by those people who know what it is all about. You simply cannot just come in and take over the entire sewer system and there is equity for municipalities in that sewer system. You really have to go with the referendum and at the same time make it attractive enough to the municipalities to become a part of that system.

Mr. Keen: I use sewers just as an example for two reasons. Number one, we are going through the throes of trying to establish a county-wide regional sewer district on a voluntary basis. Yet at the same time the legislature at this last session modernized that chapter so that districting could be accomplished better, passed the bill which in effect gave OWDA the authority to move in and take it over. Could I ask you your concern about doing the same thing on a regional basis on this kind of thing, where at the state level the authority exists for the OWDA to do it.

Mr. Russo: I am presuming that OWDA power has been abolished under the EPA bill. I think the state is very hesitant moving in these directions. There is also a question of money involved too. Cuyahoga County did it through court order and we just had the regional concept established here in Cuyahoga County by court order under Chapter 1607 I think it was, I am not sure. There is enough there within that law to do it either on a voluntary basis or a mandatory basis by court order.

Mr. Keen: I was wondering within the framework of what we have discussed in going back to this again. If you have a key township that doesn't want to sell it, they don't want any part of it, there is a long history of hard feelings, let us say between the township and the municipalities and of its neighbors and don't want anything to do with it.

Mrs. Orfirer: It can still be done.

Mr. Russo: That is happening here in Cuyahoga County.

Mrs. Orfirer: Because they have the authority to move in and take over this function and regionalize it yes, but on the broader basis. They could be individual.

Mr. Keen: A majority vote of the subdistrict?

Mrs. Orfirer: Yes.

Mr. Russo: Or the whole region.

Mrs. Orfirer: I think we better move on.

Ms. Shiozawa: Would your referendum be automatic?

Mrs. Orfirer: No.

Ms. Shiozawa: Would there be a delay in the time the regional government took over a service and the time the referendum would have to be in?

Mrs. Orfirer: It has been provided for in here. The assumption we have been working on is that it would be subject to a referendum at the time it moved into its function.

Ms. Shiozawa: Why did you exclude public schools?

Mrs. Orfirer: We feel that it is a whole separate area that doesn't need to become involved in administration and government such as I see it. I think our feeling has been that the subject is in such a broad area in itself and such a specific area it ought to be taken separately from this kind of a proposal. To my knowledge there really isn't anything that would prevent this from happening.

Mr. Russo: There have been several proposals to regionalize. They are not advocating one school board per county.

Ms. Shiozawa: I am concerned about what is going to happen to local governments in the future. We take for granted all of these services that local government provides for us for the day to day police and fire protection and garbage collection. Many of these things people really like to have close control of. They want to have some influence for recreation, parks, etc. because they are such day to day operations. I think they are under somewhat of a threat from both state and national governments. We recognize this when we talk about regionalization. But because of a recent court decision they have applied mostly in public schools, I refer to the decision in California, there is also a movement to apply this to all local services. For instance, police protection must be provided on the same basis. This concerns me because it again prevents local government from providing their own police and fire protection. The thing that is really bothering me is the assumption that a rich tax community means rich people in Ohio. With a few exceptions, this is just

not true, and the communities which are rich tax districts are those communities which have a large industrial base and are surrounded by the homes of the workers, and these are not rich people. I would like to see some constitutional guarantee of these communities because in the past, to raise money we needed two avenues, one is either increase the tax duplicate or the other is to apply higher taxes. I would like to see some guarantee that local governments have a variety of ways of raising their municipal incomes and not be limited.

Mrs. Orfirer: Does anyone have any questions?

Mr. Ostrum: Do you represent any organization like League of Women Voters?

Ms. Shiozawa: Not really, I was connected with the school board.

Mr. Vaubel: Do you visualize regionalism to encompass essentially local functions? Have local functions gotten so big that you need a regional government or are they essentially state functions that you could centralize?

Mrs. Orfirer: I would say neither, or a compromise between the two. Now I think this is something that is being misunderstood a bit. As we visualize it, we see no reason why local police forces shouldn't continue, why all the day to day things should not continue on a local level, but it could become a concern of the region only as it has a very definite effect on a wider area. Local police forces would continue, but the training and communications might be done on a regional level--this kind of thing. Waste disposal could be on a regional level, but waste collection might be on a local level.

Dr. Campbell: I don't find your ideas unorthodox, expand Cleveland to the County. I know there are problems. I think it is one of the things that should be considered. I looked at your draft here and I must say I find it smelling of academia. There is no sense of political reality in it in some respects. I think it is fine, perfect, it would fit you fine, you know, in terms of no political considerations afforded. Yet, at the same time, I really feel there is a need for some sort of regional government. I am a citizen of Cleveland. I look at figures and the changing economic base of the city and we have lost more than 80,000 jobs between 1960 and 1970. 44% of the population of the county we have only 32% of the income. The average person earns 54% more in the suburbs than in Cleveland. The median income in the suburbs is \$13,036. If the suburbs were a county, we would be 19th in the United States. Yet the tax duplicate for this city has only 1% growth between 1960 and 1970 and it has been declining since 1963. Uncollected taxes in the city of Cleveland on the 1970 duplicate now total 15% of the total billings and yet, on the other hand, 28% of the property in this city is tax-exempt. Again, the problems facing the central city which we would like to see expanded, the crime, delinquency, health, education in more children. Thirty-seven per cent of all the kids between 5 and 11 in Cleveland school district are on welfare. One out of every 7 poverty families in the state lives in the City of Cleveland. We look at the incomes. Cleveland has medium income of \$9,107 which means 13.4% are below the poverty

mark. Cleveland Heights, the suburbs on a whole, as I said, have \$13,036. Shaker Heights has a \$19,928 median income and yet there is non-equal distribution. Look at Solon, a fast-growing community. Even the building I am in, the McKee Building, which we have taken over, the state legislature is providing the money. We took it over to provide an opportunity for 87% of our kids are from the suburbs, 12% from the City of Cleveland. The City of Cleveland lost maybe 700 or 800 employees who were paying taxes, lost that tax money from the duplicate of the McKee Building, yet Solon got that particular industry. Much more industry, fewer children. Even some of the older suburbs are facing problems--like East Cleveland. You look at the entire picture. It is really not very good. The cost index has been rising 7% a year. Cleveland itself has a format whereby the policemen get paid the highest in the state, get 3% each time it goes up and yet with the declining economic facts. These economic facts I think are the dominant ones we have to know about. The City of Cleveland just is in a bad way economically. It cannot provide the adequate services to service residents of the county. Many people work in the City and yet the City is providing fire protection, police protection and all the rest. So there is obviously a need for an expanded tax base to provide services for the central city. In the East Side of Cleveland the unemployment rate is 15%, and 25% in the black areas of the City.

There is obvious need for some regional form of government. The questions is how can we get it. It is important that this question be considered by the political people involved, because they are the ones who can kill it or make it. I don't think we should make the mistake in whatever you come out with of what happened in the Metro plan of 1959 and this is why it bothers me a little bit, the academic nature of this proposal, the clean-cut structure and all the rest, the ignoring of some of the political factors and the economic factors. The Metro plan was perfect. But they did things like they proposed to abolish the civil service protection, whereupon 10,000 workers in the City of Cleveland and relatives said the old man is going to be out of a job. The other political consideration is the black question. If I were a black political leader, I would look with great hesitancy on a proposal like this, because they have suddenly come into economic power like any other ethnic group. You take again the Metro plan study group in the 50's. I did some work on it and studied it. It amazed me to find they didn't have a single black person on that originally. When Dolph Norton came in to direct it he finally got a young brilliant political scientist and is doing very good work now. I am told by Leo Jackson that one business leader in this community came and said in essence, how much do you want. There is a new emergence of black leadership, they are no longer on their knees. Like other ethnic groups, they are asking for their fair share and I think there is nothing in this here that gives them protection. They would feel a dilution of their strength at a crucial point and I think it would create major problems to get such a proposal through and yet I don't know how you are going to get it.

Mrs. Orfirer: We have been very aware of this problem and not too sure of the method best to attack it.

Dr. Campbell: I told the Mayor and City Managers Association that they would have to consider it because whether they like it or not, when they wake up 5 or 10 years from now and find that they have regional government, but not government by elected officials. I view with great concern the fantastic increase in authorities in this county. And I know that it is the easy approach in a difficult situation to get out of all the hassle between the City and County and the Balkanization of this area is fantastic. But on the other hand, I feel very strongly that ordinary people are losing their power. We are going to have the port authority, the LERTA Board all of these. I think that I would much prefer--I know it is clean-cut to do it the way you are proposing--but I would much prefer to see a study group within this county--within the five county region because it is the transit area for the economic base of Cleveland. Perhaps over a longer period of time, sitting down and trying to face some of the problems, being aware what this area is going to be like five or ten years from now. Asking that question. And then what are the problems. Perhaps we will have to do it some way like a London city council where you have the local boroughs still operating. Start with an amalgamation of some of the suburbs. We are having some success in this because they are doing it for police work in a web system on the West Side. They are doing it that way because they have suddenly discovered they cannot respond to the drug problem without having an integrated police force and perhaps this is what we can do. I would say at the moment that this would be rejected by the politicians and there would be extreme opposition. Instead, have the Governor get you to set up within each area or five county area, groups of citizens to seriously study what the areas will be like five or ten years from now and seeing whereby they can be amalgamated on a piecemeal fashion and finally leading to a common goal five or ten years from now of regional government and it will be much stronger because people will be a part of it.

Mrs. Orfirer: We are concerned with many of the same things that you are. I wish I could be as optimistic that this would come about on a piecemeal, voluntary basis.

Dr. Campbell: With the right kind of leadership, the great mass of people will respond. We have seen evidence of this in times of national crisis in this country.

Mr. Russo: The City Council is talking about introducing a resolution for metro government and Mayor Perk has expressed the opinion that the City of Cleveland should be the main focus of the metro government rather than the county. They haven't determined exactly which tack to take, politically speaking, shall it be composed of councilmen or shall it be composed of a cross section of people, but still maintain the political control of that study group. It is like Dr. Campbell says, regardless of what happens, if you don't have the political control that will determine how the election will turn out then you are not going to be able to pass that metro government under any circumstances. How do we form a group that has credibility and comes up with right answers and still maintains the right kind of control to pass this legislation at the street level?

Dr. Campbell: The group should be active as a catalyst to keep the citizens informed.

Mrs. Orfirer: Thank you, Dr. Campbell, for coming here and giving us your comments. Dick Peters is from the Cuyahoga County Port Authority. We are particularly concerned with what kinds of functions might come under a regional umbrella.



Mr. Peters: May I say that I am glad to be here and I really have so little of intelligence to say. I am here not as a member of the Port Authority, but as a concerned citizen. For many years I wrote editorials on one of the local papers trying to get metropolitan government and regional government forms and so from a distance I have been a student, I know nothing about legal things. I just wanted to talk about two minutes, if I may, about what the authority idea concept has been able to do around here. I don't know whether the regional thing would replace that, but I would mention a couple of things about the authority concept. In the face of continued failure of voters to accept the metropolitan government concept in this modern community where everything spills across the lines back and forth, one of the best substitutes that I have seen for business management function has been the authority. This is a way that has operated successfully here in taking purely business special functions that spill across the lines of the 57 communities, or whatever it is here, in the area and do something about them without being affected by the financial difficulties of the individual town, suburbs and areas and without being too tied up in some of the political effects of those areas. This is a very limited concept, but I would think a rather successful one.

One of the difficulties in having established an authority is that you lose out on some of the restraints that are necessary. It doesn't go back to the people particularly, it is really slicing a hunk off their government and putting it some place else. If our tax levy renewal had failed today, I wouldn't have come forth. But I felt this was sort of a vote of confidence, essentially, of the public and the fact that it was not an overwhelming vote, would seem to me that it more or less reflects our achievement or lack of it. I think the public is very careful and they realize we have done something. I have no answer to that sort of continued control. The difficulty of the authority concept is the possibility of proliferation. I hope that you consider as you are dealing with this, the good in the authority concept, in the fact that it has enabled this community in several areas to do things. I hope that the new sewer authority is going to be able to do the same thing in that area which has been a terrible, postponed problem decade after decade. I hope that when you are actually coming down to writing this, anything good you can say about the authority, God bless you. You might consider this as a possible alternative. It has basically worked. It must be independent.

Mrs. Orfirer: You mean politically independent?

Mr. Peters: Yes.

Mrs. Orfirer: I am really very ignorant about authorities and I would appreciate a short course. What was your mandate as a port authority?

Mr. Peters: This grew out of our Greater Cleveland Growth Association which was worried that the port of Cleveland was deteriorating badly and was not doing its job. It was a branch of city government and the City was in bad financial straits and didn't have the cash to do the things that should be done to keep this competitive, so that we were wasting this great asset. That is why the town is here. Taxpayers were not paying, no one in the county was paying. This was a way to share something that was genuinely regional, and that was the mandate to run the Board.

Mrs. Orfirer: Who created you?

Mr. Peters: State legislature.

Mrs. Orfirer: And they fund you? You have your own tax. Where would you say your areas of success and perhaps some not so successful are?

Mr. Peters: I see in our areas of success that we have a growing business. We are operating largely out of the fare box. Money from the levy is to buy more land for expansion, get more warehouses, transit sheds to put goods in. We are not dependent on municipal crises.

Mr. Ostrum: I would like to ask Dick another question. He has said that it occurred to him at least that the authority was at least one method of solving the problem that was near impossible. Our port was deteriorating, we didn't have enough funds to operate it properly and effectively as a branch of city government when the port authority came into being. I was wondering if Dick knows, take Baltimore and Seattle or any other large ports within the country, New Orleans, do you know how they are operated? Are there any regional forms of government that operate ports or are they all done by authorities?

Mr. Peters: They are done just about every way there is by county government, some as branches of cities, some have separate commissions. Just every kind of thing that you can name. There are 68 port authorities. The most famous is New York, for the most obvious reason that you have two states. Their appointments are made by the governors of the two states.

Mr. Ratner: The biggest problem to my estimation is that our government is run by local boards with local citizens in small communities. Most communities haven't got big enough people to visualize what the problems really are. Most people don't visualize into the future. They are content to live in their own little perspective regardless of how it is going to react to the overall picture. We are going to lose industry yearly to a great extent because nobody here is in total authority to deal with the bigger customers or big clients or somebody of national scope. To my estimation we are just being piecemeal and losing out by comparison to any other big city. For instance, when I go to the South, I go to their city attorney and he knows what he is talking about; they have an engineer that knows what he is talking about; they have a land clearer that knows what he is talking about. In other words, they can look at the overall scope and they can appreciate and can counsel you. When industry is ready to build, they don't want to wait around for a year to get answers about zoning and changes in codes. We just haven't got the base. Today we haven't got a package we in Cleveland can sell to any new industry or even to some of the industries that are here. We just don't have the strength. We must have some kind of a tax base which is going to be county wide, or regional wide, that can help with those problems. I will never forget that about 5 years ago we wanted to fix something up and needed \$20,000 for a parking lot and the Mayor did not have the money at that time. Just imagine the Mayor of the City of Cleveland not having a way of doing a small item

like that. How in the world can you think county wide? And the second thing, you elect people for two years. The second year you can't get an official to do anything. He is afraid to move. The less his name is in the public eye the better. So what have you got? Make up your mind you have got people that are just absolutely scared of doing anything. They tell you off the record they can do this and that and on the record they can't do anything. You cannot move forward with that kind of an organization. Cleveland hasn't got the strength and the outlying areas are too small to think in broad avenues. There is no question we should have county government or regional government. You can only build through a strong organization or through a strong form of government. We don't have it and we must have it. Cleveland has not improved in the last ten years. We have some taxing powers but we are not using them.

Mrs. Orfirer: Do you think that a wider tax base is one of the answers, then?

Mr. Ratner: I think to my estimation there is just not enough money to go around for certain things provided that it is used properly. There is no question in my estimation that to develop more industry you must have a broader tax base. We are not self-sustaining today in industry.

Mrs. Orfirer: It is a very sad and realistic picture you draw.

Mr. Russo: I don't think that the multiplicity of problems that he speaks of are basically going to be solved with a constitutional amendment for tax purposes.

Mr. Ratner: We in Cleveland are not able to coordinate regional thinking in development. Somehow we have created a feeling in our citizens that big business is bad. We should make up our minds that without big business you have no county, no city, nothing. Unfortunately, we are not reaching our citizens or the people that are supposed to manage those things; they are not knowledgeable. We are one of the slowest growing areas in the country today.

Mr. Goss: I don't know if you are familiar with the federal legislation to transfer funds, but in order for any area to be eligible, and in this case the area of 7 counties, it has to have an area wide transit development plan and a unified or officially coordinated transit system or otherwise you cannot get federal funds for transit. At the present time in this seven county area, we have 18 different transit operations operating relatively independent of one another without any coordination. In order to retain our eligibility for federal funds for the year we have to obtain the 7 county coordinated transit system. When you look at this problem it obviously says that you need some sort of a regional entity to bring about this coordination. You have to look outside of Ohio and see that every major urban area in this country has some sort of a transit authority that is operating and subsidizing public transportation. This becomes another need for a regional approach. We have proved conclusively that when you try to do things on a local jurisdictional base each individual jurisdiction does not have the resources to raise the necessary funds to do the things that they have to do to provide the quality of service. This is especially true in the City of Cleveland where you have one-third of the people who could really be classified as transit-dependent, because they live in households and do not have an automobile. You cannot provide that quality of service through a non-subsidized transit system. But again, the City of Cleveland does not have the resources to provide that sort of money.

If you are going to expand the transit service, you don't need all the freeways. What we are all about is to determine the plan and come up with recommendations for the type of entity and type of subsidizing mechanism which you will need. Of course, you can create the entity without the will of the people but in order to tax people, you have to go to the vote. What is happening is that you are now getting a whole proliferation of special purpose authorities. You are getting transit authorities, sewer authorities, health authorities, which, when you add them all up, are a regional form of government, but all of these authorities have different geographical bases, different policy making boards, and are not coordinated. Somebody was just saying why not create some form of regional entity and include all these functions and have one common geographical base and one common policy making board. It seems to me that this would make a lot of sense instead of going through all these motions which you are presently going to do. If we want to have these federal funds, presently only to provide capital improvements, we are going to have to go the authority route on some sort of area-wide entity to achieve coordination. Without it we are ineligible for it. You can understand from the federal government's point of view why they need a coordinated effort because they don't want 18 applications coming out of the Cleveland area; they want one application. If you are really thinking about putting together services on a regional basis, you have to think of almost the seven counties because there are so many things that overlap between the Akron and Cleveland areas.

Mrs. Orfirer: Mr. Goss, have the various local units given up a certain amount of authority to the regional authorities?

Mr. Goss: It depends on the area. There are as many different forms of transit authorities as areas. In most cities they have set up authorities you tend to get more of a unified system, one operation, one system. You don't just change these things overnight. When people begin to feel they are getting higher quality of service on a regional basis, then they would not be as reluctant to jump in. You have to show them that the authority is a better thing than what we have now.

Mr. Gherlein: I am appearing at the request of the Greater Cleveland Growth Association. I am the Chairman of the Legislation Committee of that body yet anything that I have to say here will reflect only discussions and comments that I have heard in meetings which we have been holding. We do not have any policy or official position either on your proposed regional units of government draft or upon any other aspect at this date. I am meeting really today the local governments question that we all face. The only decision we really made is that this is one of the most vital questions of our area. We have in the past participated in two efforts to obtain an alternate form of county government in Cuyahoga County, and this is based on determination by the groups and boards who were making the determination at that time that in Cuyahoga County something needs to be done to strengthen the ability of the people who have responsibility in the county level of government. We are not criticizing the people, but the form that they have to work with to be able to carry out at least those functions which in a general way are recognized as having a regional effect. The Mayors and City Managers would be a group that we would expect would have a number of concerns about themselves and their position if powers moved to a county base and yet there are some functions that must be handled on a county base. The obvious ones are air and water pollution matters. Everyone agrees that we can't have 54 or 60 different theories and ordinances on how to deal with this.

To some extent the federal legislation and state legislation may take some of the pressure from that but there were still some of the areas in which even in that group there was strong feeling that there should be a central administration on the county level. The form of county government we have in this state was designed when we had a lot more trees and a lot fewer highways. The three man non-legislative, non-executive form of government was just not designed to spend more than \$300 million a year, and that is what the county commissioners in this county administer. An organization such as the Growth Association, in attempting to interest people in business from out of this county, in knowing whom to talk to. On some things, the existence of a county executive alone, even if he didn't have any more than ceremonial powers, would be a large improvement in Cuyahoga County. On the other hand, I quickly add that if we had an executive at the county level, I think there would be the kind of transition once confidence is gained in the county executive and whatever the legislative arrangement would be which would permit the transfer of additional functions.

Up to date the only things that have been transferred are things that nobody wants, the hospital, the zoo, the kind of things that everybody likes to visit but nobody likes to pay for from the tax base. If we can demonstrate efficiency and ability, I don't think that we need to go to the point of taking away the police and fire protection and we can still maintain the local municipalities for matters that are all close and dear to people's hearts. I think there is enough reason to establish a strong county government which I think requires an elected executive. To some extent this is the problem of the people, because we have some statutes that permit the alternate form. We have had two elections here within the last three years and the margins have been very close. Personally, I don't believe the defeats have been attributable to a complete disagreement by the people with what has been proposed. I think there have been a great number of people who don't understand what has been proposed and are not willing to take the chance that what they are voting on might deprive them of some of their local control situation. I don't think that we know of any specific question that we would pose to a constitutional revision commission on this subject. At least it has been difficult for us in this county to take advantage of the optional forms that the legislature has proposed. I think that, personally speaking, I would like to see the legislature take some action which would force a county such as this into a form of government without transferring any powers initially until this is agreed upon.

Moving on to your regional concerns I have just a few questions. I think generally the question of regional planning is one that the Growth Association would accept this as a correct approach, and necessary. I am not certain that we will see the same trend of concentration of population that have been projected. We have already seen some drop in total population from what has been projected and so I am not really convinced that we will have the continued development and filling in of all the corridors between Cleveland-Akron, Cleveland-Lake County, at least in the way we talked about in the last couple of years. But I do think there are certainly a number of things that need to be handled on a regional basis. I am afraid the implementation of the regional units of government approach might put the county effort back even farther and I think as between the concepts of regional units of government for

planning purposes and a strengthened county government that can assume and operate in an efficient modern way, I think the latter is more important to the people in Cuyahoga County. I think that while NOACA is far from perfect, it is a place where people sit down and agree, at least until they come up against something of vital interest. I think that we are going to continue to suffer and lose ground in this county in the sense of competing with other industrial and commercial areas by reason of our lack of a centralized source of power and authority.

Mrs. Orfirer: Do you think the idea of a revised or strengthened county government would necessarily be mutually exclusive of creating regions for coordinating and review purposes?

Mr. Gherlein: No, I don't think it would be mutually exclusive.

Mrs. Orfirer: It has not been our thinking that it would be and I wondered if you did see any need for something larger geographically than a county for these purposes of coordinating the services and planning that go on within the counties.

Mr. Gherlein: I see the need for a coordinating on a broader basis than this. I don't really have any measurement of whether that need extends to the imposition of a governmental body. I think the transit study will be interesting to watch. It is difficult to my view to be able to conceive of being able to establish a region that will be proper for all the regional concerns that might come up. Some of our regional concerns are going to go in one direction and some in another and it seems to me when the concern arises, if you have a pattern of voluntary cooperation for planning, I would tend to think that the ad hoc approach might be at least as good upon a contractual basis or under council or government arrangement or under existing statutes, so that I really don't have any strong feelings on the regional units of government on a proposal for or against, except to the extent that it will add one more element of confusion in the voters' minds. If there can be an effort and I believe there should be and will be additional efforts in this county, because I think they are necessary to strengthen the county government and I think that if proposals relating to regional units of government are in the air at the same time, then voters even of good faith are going to be confused and back away from anything they have a choice to consider.

Mrs. Knox: You said almost everything I wanted to say. I think I would absolutely endorse your feeling about strengthening the county government with an executive and legislative body could solve many of the problems that this regional form is designed to attack.

Mr. Walker: As I see it, there are two factors working that will force some kind of change in our government. One of them is demand, the second one is cost. In the field of transportation there is a demand that transportation of elderly people be provided and a demand that transportation for indigents be provided at a lower cost. There is a demand that that pollution that comes from automobile traffic be reduced, but this affects public transportation. I can recall fifty years ago we had non-polluting public transportation - regional. You could get on the interurban car



and go from here to Oberlin or to Elyria or Wellington and the car created no pollution. It was convenient and it served a regional area, but the automobile came along and we abandoned this. Now today, fifty years later, we find that we wish we were back where we were 50 years ago. So demand for service is going to force us to do a lot of things and the cost of that service is also going to force us to do some things because we cannot provide the service without the cost, in public transportation if we are to subsidize transportation for the elderly, the indigent. We have to give the inner city people the same kind of transportation consideration that we are giving the suburban people. By that I mean we are building multiple lane highways into the suburbs to bring them into the city. In doing that we take off the tax duplicate millions of dollars in property the taxes on which go to our local governmental institutions, schools, etc. So we are taking that tax away from the inner city to bring the suburban people into the city on fine highways. At the same time we are reducing the public transportation within the city that benefits inner city people. We are forcing the cost of transportation up to the point where the inner city people hardly use it. We are taking out of the inner city industries that used to be within walking distance or street car distance of the homes and putting them miles out into the country. That requires that the inner city people must own an automobile to get to work. So we are creating a need for more highways and we are creating the cost of more pollution.

We are doing all of these things and there is no coordinating effort by which we can begin to harness these things into something that is reasonable and begin to give service at reduced cost. I think the only way we can do this is through some regional form of government, whether it is strengthening the county government. I don't think that is sufficient in all counties, at least two counties I can think of, Cuyahoga and Hamilton. There is not enough land now available to do many of the things in the way of regional services like waste disposal, water, transportation. So we have got to come up with some kind of a solution or new approach. The county form of government has not changed substantially in the last few years, but the problems of county government have changed considerably. We are making greater demands for service and we certainly are being taxed for the added cost. I think the way people have been turning down tax levies, whether for schools or jails, that we have got to begin to realize that we have got to reduce tax burdens and the only way to reduce tax burdens is to reduce the municipalities because we have a proliferation of them that has been pointed out--some 60 in this county alone--all of them using tax power without any regard as to how that tax affects another community. We find that now with the use of income tax, payroll taxes, etc. there are thousands of people who work in Cleveland who must now pay the city payroll tax although they may live 50 or 60 miles away. They may have these conditions now pertaining in most of the counties where you are passing the income tax. It was mentioned about what happened in Cincinnati yesterday when they passed the transit charter amendment. They are going to add on to the income tax of Cincinnati, not Hamilton County, Cincinnati, an additional millage to pay for reduced transportation costs in Cincinnati, reducing transportation costs 55 cents to 25 cents per ride providing more services, buses, and a lot of other things. But the people that work in Cincinnati may live in Kentucky or Indiana and some two or three counties away they will be paying for this through the payroll tax.

So you see people are living in a region now, not just in a small community or not just in one county. So we finally admit that services and the attendant cost that follows, that we are going to have to approach some regional form of government on many of the things that people are demanding service, like pollution, transportation, garbage disposal, water and a lot of other things that are no longer stopping at the city limits of any community. I think demand for service and the resultant cost of supplying it, those services -- is going to force us into some kind of a regional government. I think it has to be more than one county.

Mr. Heminger: May I ask a question? It seems to me in your suggestion where the elimination of a number of governments is concerned, you talk about reducing the cost. Am I interpreting it correctly, that you would visualize it if you had a bigger government, either county or regional, that that would over some period of time eliminate the other taxing units in the other governments?

Mr. Walker: It would reduce costs. We have 50 mayors we have to pay, we have 50 law directors to pay. We have 50 everything else in these communities we have to pay. Now if we consolidated them into 10 or 1, we would have some reduction in cost and certainly wouldn't have to reduce services in every municipality. We could serve a greater area.

Mrs. Orfirer: Mr. Walker, this brings me to a question I wanted to ask you, if I might. We heard a lot in these meetings about the feeling of identification that people do have with the smaller level of local government and about the every day kinds of services that can be handled on a local level. We have heard and are aware of the problems of adequate representation of all groups of people if we were to move into a regional form of government. I wonder if you might give us your views or thoughts that you might have specifically in relation to creating a regional form of government. Have you had the opportunity to look over our proposed draft at all? You know we are talking about electing from districts, etc. What is your thought as to how we can assure that smaller groups within the larger region would feel adequately and be adequately represented?

Mr. Walker: Well that is difficult to state. I know everybody is selfish. Every municipality feels that they should remain autonomous and identifiable. I think it is true with people, with areas. We have all of these visions that represent more areas of people and it is hard to overcome, but I think the sheer weight of the cost of government is going to force us to overcome many of these. We are going to have to put aside our snobbishness and selfishness. We are going to have to begin to look at the total picture, the cost of government and the services the government must perform. I believe that as people get closer together we have less fear of each other and that this problem will perhaps diminish and die out.

Mr. Russo: Are you going on record then for minimum county alternative form of government and maximum regional form of government?

Mr. Walker: Yes.

Mr. Russo: In the past you have opposed the county alternative form of government.

Mr. Walker: We were forced at that time because of certain circumstances. I have always been a believer in broadening the subject matter.

Mr. Russo: But right now, presently, we can say you are in favor of the county concept, you would be supporting it publicly. Well I am glad that you are taking that stand, because it is very important to know the feeling has changed in the last couple of years so far as you are concerned.

Mrs. Orfirer: We talked a good bit, Mr. Walker, about several of the ethnic groups in Cleveland who worked very hard to establish a power within the city. Do you think that they would feel threatened by a regional form of government?

Mr. Walker: I am sure that there are groups that would feel that way. We have to begin to look at this on a broader basis. I think as a nation we are going to grow up eventually.

[Mr. Watkins at this point read from his prepared statement which is attached hereto.]

Mr. Watkins: I have the feeling that zoning is a matter that is subject to change without notice.

Mrs. Orfirer: By whom?

Mr. Watkins: By the local government.

Mrs. Orfirer: No.

Mr. Watkins: Well not quite without notice, but it is a very amorphous sort of thing and easily adjusted. Witness the Miletic coliseum being plunked down in a rural area zoned for residential use.

Mrs. Orfirer: That was to go through their council.

Mr. Watkins: I know, but what I am saying is this kind of thing creates all sorts of problems that deal with water supply and sewage service, etc. that makes planning for those services essentially impossible to do.

Mrs. Orfirer: So that one of the purposes of this would be to stop that kind of thing?

Mr. Watkins: Yes, that kind of change. I don't think without a constitutional change a regional government would be able to make any better use of zoning regulations than the local governments have. Am I right about this?

Mr. Ostrum: Are you suggesting that zoning be spelled out specifically as a power in any suggested revision that we have here to talk about?

Mr. Watkins: I think it has to be if--I think it has to be changed. I think that zoning has to be far less adjustable to demands for change, if we are going to have what I think people are talking about when they are talking about regional government policies. And one of the things in your proposal here, it seems to me, had to do with the development of an area. What controls development is zoning. Right?

Mrs. Orfirer: Right. We have gotten into several discussions about this Mr. Watkins, but what we run into is the home rule question and we have had conflicting opinions about whether it could be accomplished without constitutional change or not. My personal opinion at this moment is that as long as there is conflicting opinion, that perhaps a constitutional clarification of this will be called for so that there would not be any question of doubt about it.

Mr. Stoyer: I don't have a learned discourse. I came not as an expert on law or planning, but really as a kind of a survivor of a bloody election. I am looking at things maybe from a more parochial viewpoint than has been discussed here previously, and certainly in reading the material that was submitted to me, I can see a lot of merit in the proposal of districts. I don't have much idea of the timetable, however. It seems to me that possibly the best step we could take in this direction might be to succeed somewhere on a more limited scale. I think other states, such as Maryland, might be one example where some form of charter has succeeded in something larger than a city. Others have followed and apparently learned enough to adopt charters and put them together. So I guess I am here today not to dispute your plans for districts in the state, but maybe to ask that you might want to consider some interim steps between here and there. And I think these are steps that could make the ultimate goal of districting easier. First of all, in facing the practical matters that face us right now in Trumbull County, I guess the big concern at this point is the very unfair law that already exists, so that no matter what you do you are going to run into legal questions and regardless of how silly they are, they always cast doubt on the efforts of a charter commission. I think a good example would be the Summit County effort of a few years ago where I think the lawyers used most of the smoke screens.

But the answers, as I say, on a closer range view that we could use would be what to do about the funding of a charter commission. There isn't any clear definition of what is a reasonable amount of money or what is a reasonable amount of research by the charter commission. What is the time element involved? How long do they have to present a charter to the people? Who should the charter be presented to and what period of time, etc.? The mechanics for charter government, I think--not mechanics--the system is not too bad, but the mechanics of the thing are so difficult that it makes it almost impossible. I am sure you are familiar with this. In other areas, we run into simply making it easier for subdivisions, whether incorporated or unincorporated, to merge rather than be annexed. It seems that local officials are much more willing to accept these gradual steps than I think than they would be to jump from where we are now to regional government. I don't know about other areas of the state, but just the effort for a charter was bloody enough. I think we might have civil war in Trumbull County if somebody tried to impose this in a one fell swoop.

I think another thing might be a form of government that could be perhaps amended at some future time. This would be perhaps a workable way to get this first little success that we are talking about. I know that you discussed the possibility of putting a charter directly on the ballot by some form of petition or something authorizing a charter commission to simply meet and be hand picked if necessary, rather than the situation that we will face. It seems to me that while looking into this longer range thing, it would make a lot of sense to me if there were some half forthcoming from this group or from the state legislature to simply make what we already have a little easier. I don't really think this would be in any way contradictory to what you have been discussing here. Is there any sign that there is anything in prospect to make these local things any easier?

Mrs. Eriksson: You mean as far as constitutional changes are concerned?

Mr. Stoyer: Or in the legislature?

Mrs. Orfirer: It is mostly constitutional.

Mr. Stoyer: Clarification of what somebody did a lousy job on in the first place.

Mrs. Eriksson: Either writing them in the constitution, which this committee certainly talked about and will be talking about before it makes any recommendation at all. In other words, that is part of this committee's function. Another alternate would be to rewrite the charter provision in the constitution so as to make it clear that the legislature is supposed to fill in details with law which, of course, it has never done in respect to county charters.

Mr. Stoyer: What kind of a timetable do you have for presenting this proposal?

Mrs. Orfirer: We made a determination as a committee very early in the game that we were not going to make any proposals to the Commission as a whole in the area of local government until we had looked at all facets of it and then go back after we have looked at each one individually and look at it as a whole to see how it would interrelate. For example, if we strengthen county government, how is this going to affect the idea of proposing regional government and vice versa. So that our feeling is that it will probably be approximately a year from now that we will be ready to make serious proposals to the commission.

REMARKS OF GEORGE H. WATKINS BEFORE THE LOCAL GOVERNMENT COMMITTEE  
OF THE OHIO CONSTITUTIONAL REVISION COMMISSION - NOVEMBER 8, 1972

[The opinions expressed are those of the speaker only and do not necessarily represent the position of any organization with which he is associated.]

Materials available for my review and upon which these remarks are generally based are as follows:

- (1) Explanation for a constitutional amendment to create a system of regional governments in Ohio.
- (2) 10/9/72 draft of proposed new Article.
- (3) 10/23/72 draft of proposed new Article.

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There are, I believe, three sets of activities currently underway related to your proposal which it might be well to set forth.

- (1) The Governor, to improve "efficiency and economy of providing State services," has proposed the creation of State Planning and Service Regions, from which all State services requiring decentralized facilities will be locally delivered.
- (2) He has appointed a Commission on Local Government Services which is to (1) evaluate delivery of public service to local governments and recommend improvements, (2) evaluate constitutional and legislative obstacles restricting local government operational capabilities, (3) examine structures and financial capabilities of local governments to do their work and consider appropriate improvements, and (4) study governmental interrelationships and consider improvements related to the delivery of public services to local areas.
- (3) Several Federal Executive Departments (HUD, DOT, HEW, EPA and BOR) have ordered each local government to belong to an Areawide Planning Organization if it wishes to receive federal grants; the Federal Office of Management and Budgeting has ordered that the boundaries of Areawide Planning organizations must coincide with a State's Planning and Service Regions.

Your proposal, as I understand it, is to convert into Regional Governments these Federally ordered Areawide Planning organizations which will, by Federal order, coincide geographically with State Regions for delivery of certain State services.

Your proposal is perhaps a little premature, but it does have the merit of being locally initiated prior to being ordered by the Federal Government.



I think if we were starting from scratch to build a government structure today in Ohio one of the alternatives that surely would merit consideration would be to have 10 or 12 counties instead of 88; a concomitant would be financially stronger municipalities, not ones whose resources are bled by State and more particularly Federal governments. It is significant, I think, that on the first page in the Governor's "Challenge for Ohio" he says, "The resources of Ohio's service agencies include professional people ready to assist local officials...and they have money...whose money? Yours -- tax dollars earmarked by the State or Federal government for return to local communities to finance local projects." Pragmatically this suggests that a major reason why local governments are not meeting their responsibilities is because State and Federal governments have taken more money than they need to carry their responsibilities and are now directing and financing what have been and are essentially local government responsibilities.

Naturally local governments resent it. Whether Ohio constitutional issues are involved in this issue and whether it comes under your purview I am not sure. However, if you want to solve a problem, it is well to find out what the problem really is rather than create more problems by dealing with only the ramifications of the original problem.

In any event, I think this main issue has a bearing on your proposal.

The existing frustration and disenchantment of local government leaders with higher levels of government makes the creation at this time of a new higher level of general government, in my judgment, improbable; considering that the need has not really been demonstrated and that there are strong interests to maintain the status quo, I would judge it not only improbable but impossible.

It seems to me that need gets to the heart of the question. If need can be demonstrated, and if economy can be demonstrated, movement from our present system to another has the possibility of being effected.

Applying these judgments to your proposal, of course, cuts the meat out of it and leaves us not with a regional government but with a regional agency which might be the Planning/Service region of the State and the Areawide Planning Organization of the local governments rolled into their ordered Federal mold, except for one thing.

You propose that the Agency regulate areawide development in accordance with its plans. This is an Ohio constitutional issue and a nasty one to try to deal with. I suppose it deals or could deal with much more than zoning, but let's just consider zoning.

In the water resources field in which I labor, there are a number of situations that have a habit of reoccurring which could be eliminated or at least minimized by zoning.

- (1) Flood damage - this is a well known phenomenon with a statistically predictable reoccurrence interval which could be avoided totally if we were willing to let nature have her floodways. We have not been. In fact we have moved the other direction with vast expenditures for protection of flood plains, solidified by cheap insurance for those who have built in them, and outpourings of public funds to repair the damages when they do occur. Local governments have the power to zone such floodable areas. Some have. It is a rather tedious and expensive procedure and in many instances data on record floods is unavailable so one enters the no man's land of judgment as to proper zoning limits. If building is prohibited and use of such land is restricted, the owner may feel subjected to a "taking" of his property. As a matter of public policy, however, it is difficult to condone further development of flood prone land with damage-able structures, if every time there is a flood public monies are expended in relief of its damages.
- (2) Drainage - this is or may be flood damage of smaller magnitude but is nevertheless a serious issue. Normal practice in building roads, bridges, culverts and so on has been to provide for water flows generated in the watershed upstream. As development progresses upstream and the runoff characteristics of the watershed are changed the flow characteristics downstream change and the flood damage potential increases. Major public storm sewer improvements in the downstream areas may be rendered inoperable and damage done both directly and indirectly to existing structures. Watershed zoning, regardless of municipal boundaries, could be used to control this but the "taking" of land would be even more apparent than in the normal major river flooding situation. Alternatives requiring developers to so adjust their development that runoff characteristics remain constant are conceivable but may not be practical for most building-by-building development that occurs.
- (3) Individual sewage systems - there are developments far from central services for water supply and sewerage. Land will absorb and render safe normal domestic wastes treated to settle solids and provide preliminary organic reduction. However the capability of land to do so varies widely. Development density control is necessary. Eliminating the right of persons to breakup their property into small properties for the purpose of maximizing their gain, or, even worse, permitting multi-family use where sanitary services are unavailable and the soils won't handle the effluents, again, may be a "taking."

You may not consider these constitutional issues. The case law, however, seems generally to favor the landowner using his property as he will regardless of the consequences to others. The unwillingness of local governments to take firm stands on such zoning may be associated with their concern as to the strength of their constitutional position.

If the plans of the regional Agency called for non-damaging uses in the flood plain, for drainage control by upstream developers or adherence to a watershed drainage plan, and absolute regard to property development based on soil conditions, could

the Agency constitutionally enforce them? Is this the reason for trying to make it a government, so that it could. If it were a government, could it under our present constitution? If so, could it any more effectively than the present governments?

This report is certainly not exhaustive. There are other problems which inhibit rational land development from a water resource point of view. It may, however, bring into focus the constitutionally awkward zoning issue. It suggests that the need for a new level of general government has not been demonstrated and that it will have to be before any such creation is realistically possible.

Ohio Constitutional Revision Commission  
Local Government Committee  
November 8, 1972

### Summary of Meeting

Present at the November 8, 1972 meeting of the Local Government Committee held at the Hollenden House in Cleveland were Chairman Orfirer, Messrs. Ostrum and Heminger and staff members Kramer and Eriksson.

The chairman and Mr. Kramer reviewed changes previously made in the regional draft.

Mr. Kramer - The first change is the elimination of the maximum and minimum requirements for numbers of regional units and next eliminated the requirement that any revision of the voundaries be made only by three-fifths of the members elected to each house. It was felt that once the regions are established, the boundaries will not be easily changed, and it's not likely that decisions are going to be made on a partisan basis without some good reason. Revisions of boundaries could not be made within a period of five years after the last previous revision. In selecting five, we were going past one gubernatorial term and two terms of the General Assembly. By saying five rather than a lesser number we are opting for stability as opposed to flexibility. The boundary commission should be established within 90 days after the effective date of the section. It shouldn't take any longer than that since there is no General Assembly action required and appointments are made by the Governor, the Speaker of the House and the President Pro Tem of the Senate and then we get into some fairly protracted discussion about the manner of appointment. With these three people you could easily have a division of parties making a joint appointment of a commission very difficult. So we suggest making it 9 members, and divide the appointment among the three of them. Each one could appoint not more than two from one party, making it clearly bipartisan. It could be 6-3 or 5-4. It really is hard to visualize any attempts to be terribly political. Perhaps bipartisanship is as much for appearance's sake as anything else. I am not sure that anybody can just by appointing these commission members foresee what they're going to do and what the General Assembly is going to do after that.

The next thing was the elimination of the restriction that nor more than half of the members of the boundary commission shall hold other public office.

Mr. Ostrum - Some of the most knowledgeable people might hold public office, and this will be a short-term, specialized job and we shouldn't preclude anyone.

Mr. Heminger - How about this problem of a tax base for regions? Will we have a conflict because of home rule?

Mr. Kramer - The General Assembly has control over taxes, if it wishes to use it. One thing we tend to overlook when we get into some of the discussions about home rule is that home rule is more than just a legal concept. It goes into the whole psychology of home rule which I don't think you can ignore. You can make arguments about the Supreme Court having chipped away at home rule. You get to the point where nobody is going to believe that the Ohio Constitution means exactly the same thing as a constitution which doesn't have any home rule. People believe in home rule.

Mr. Heminger - We define a lot of arbitrary geographic boundaries because of real estate valuation. Some of the boundaries are drawn and maintained whether by annexation or merger in order to maintain a tax base. The kids go to school in a district

where a gigantic Whielpool plant is located and another plant has come in and they are building buildings out of operating funds. This is an extreme example but it dramatizes what happens. It isn't right.

Mr. Kramer - In this county Cuyahoga Heights and Newburgh Heights were both incorporated strictly for the purpose of maintaining certain industries within a limited tax base. Cuyahoga Heights has an extremely low tax rate. They buy new band uniforms every year and the rest of the area doesn't share in the tax base. It's in the steel belt. People are willing to put up with the air pollution to keep the low tax rate.

Mrs. Orfirer - This is one of the things we were talking about, you remember, with the Twin Cities--the plan of redistributing 40% of the growth in assessments, which is very appealing.

We provide that the boundary commission shall, within six months after their appointment, submit to the General Assembly its recommendation as to the number of regions and the boundaries thereof. Why did we pick the six months?

Mr. Kramer - It involved consideration of a reasonable time to do it, making sure that even if there was a recess or time between sessions of the General Assembly they would still have a reasonable amount of time to do it.

Mrs. Orfirer - Each region shall be composed of compact and contiguous territory and shall be bounded by county lines, except that each municipal corporation and territory subsequently annexed thereto shall be located entirely in only one region. We took care of that one. It shall be of appropriate size, etc. If the General Assembly does not, within 180 days following the submission of such report, enact a law, the commission's recommendations automatically take effect. Does the time suit you?

Mr. Ostrum - Yes.

Mr. Kramer - We eliminated a provision for a special law to providing for alternative forms. Originally I experimented with this idea of a provision allowing special laws applicable to one or more regions used to provide for the form of government. After the last meeting the consensus seemed to be that we have experience with this system of providing for a general form of government, alternative forms under general law and then for a charter form, and there seems to be no very good reason for doing otherwise with respect to regions.

Mrs. Eriksson - Members of the General Assembly express concern each time that it appears that the General Assembly is going to be dealing with individual local problems.

Mr. Kramer - We omitted a provision for an appointed executive officer. And then Section 3 redesignates planning and regulatory powers for regions. We have eliminated the provision as to the federal grant review thinking that this is not appropriate in the Constitution but with the expectation that if these regions are set up, to the maximum extent possible they would be used for this review function, making sure that we have not precluded it in any way, but not requiring it in the Constitution.

Now Section 4 has been completely rewritten in an attempt to make it clearer and more understandable. It is in two sentences now and there is a provision at the end of the second sentence providing any agreement is subject to disapproval by the General Assembly. Now I think we have to give some more consideration to that

particular provision, as to any agreement being subject to disapproval by the General Assembly as to whether we want to leave it that broad really, which would allow the General Assembly probably to terminate agreements.

Mr. Ostrum - There are agreements both within and without the region.

Mr. Kramer - Yes. I think the idea was that agreements should be subject to an initial veto but I wonder what the considerations are--the economy of the region vs. the power of the General Assembly--and whether a veto just at the inception of the agreement is sufficient or whether the General Assembly should have an overriding power.

Mrs. Orfirer - Paul Gillmor raised the point very strongly. That the regions could cooperate and join into something that would really threaten the power of the state. There is no limit upon the joining together of a group of regions and taking over a great many functions.

Mrs. Eriksson - There might be circumstances under which the General Assembly would assign particular units of government particular powers or duties that the General Assembly really wanted performed at that level for some reason of state policy. If you had no legislative veto over regional agreements, the policy established by the General Assembly might be frustrated.

Mr. Ostrum - They can wait under this constitutional provision five years and disapprove it. There's no time on it.

Mrs. Eriksson - Another way of doing that would be a conflict clause--to provide that they could make any kind of contracts that they wanted to providing it did not conflict with law, which means that the General Assembly could always specify in the legislation instances in which it really wanted a particular unit of government to perform a service.

Mr. Kramer - The Constitution already provides for these broad powers to contract and shift functions around under the county charter provisions. It may be a much different thing, though, where you would have say a dozen regions able to start contracting with each other as opposed to a county.

Mr. Ostrum - Well, we'll have to get a bigger group together to decide this.

Mrs. Orfirer - This idea of not being in conflict with general law sounds pretty good off-hand. I like that better than coming in with a veto on something that has been attempted.

Mr. Kramer - There really should not be any reason to interfere with any particular contract, within the region. And it's a little hard to visualize any particular agreement between two regions over one specific function; but if you want to retain control over policy in the General Assembly there probably should be some veto power provided for. I think we should give some further consideration to that.

Mrs. Orfirer - Section 5 reads "The legislative authority of a region may at any time propose that any function or service including, but not limited to, those relating to systems of transportation, highways, park and recreational facilities, water supply, sewerage and sewage disposal, solid waste disposal, air quality control, flood control, and other public utilities, services, facilities and improvements being provided by any of the political subdivisions or units within the region or which any political



subdivision or unit within the region is or may be authorized to perform, except the public schools, which is found by such legislative authority . . . ."

Mr. Heminger - I suggest we say that the "legislative authority of a region may at any time propose that any function or service be assumed by the regional government," and then go back and pick up "including but not limited to those relating to systems of transportation, highways, park and recreational facilities, water supply, sewerage and sewage disposal, solid waste disposal, air quality control, flood control and other public utilities, services, facilities and improvements being provided by any of the political subdivisions or units within the region or which any political subdivision or unit within the region is or may be authorized to perform." It's still a long sentence.

Mrs. Eriksson - We could make two sentences by doing what you are suggesting, putting the beginning and the end of the sentence together and say that the legislative authority proposes that any function or service be assumed by the regional government the legislative authority determines that it affects and then list the three things, and then make a second sentence out of "such services would include but not be limited to those relating to . . . ."

All agreed.

Mr. Kramer - What about the exception for the public schools?

Mrs. Orfirer - We had decided at that point that the whole question of education would be taken up separately. Which of course does not mean that it can't come under what we have decided to do about local government.

Mrs. Eriksson - If you could word it so that it applies only to elementary and secondary schools being run by existing school districts but did not exclude the possibility that vocational and technical schools which are already operated on a more or less regional basis might indeed come under this kind of government.

Mr. Kramer - In some other states the schools have been operated by other units of government. For a long time the schools have been separate, and one thing that I would foresee which would probably be a good political reason for excepting the public schools would be a great fear on the part of many people of getting the public schools involved in the kind of politics that you find in local units of government, so that while you might say that logically you shouldn't except the schools if you are going to include other kinds of services, I'm not sure that the logic of that would be sufficient to overcome the objections that are sure to follow. I think that would be a very practical consideration. The financing has been pretty much separate, but there usually hasn't been much problem of allocating funds between the schools and municipalities. The municipalities have been able to get away from the property tax more and more, and leave that to the schools.

Mrs. Eriksson - Institutions of higher education could very well be viewed on a regional basis.

Mr. Kramer - We're talking about any political subdivision unit, community college districts, technical institute districts.

Mrs. Eriksson - I would assume that "public schools" would probably still permit community college districts to be included within the regional government but not

the vocational and technical schools that are being operated on a high school level.

Mrs. Orfirer - "No measure authorizing such assumption shall be approved by the legislative authority of the region except upon notice of such proposal and an opportunity for all interested persons to be heard thereon and no such assumption shall become effective unless provision has been made by the region for any necessary and reasonable compensation for any property or facilities of any political subdivision or unit which are to be assumed by the region." After "provision has been made" do you need "by the region?" Maybe it's going to be made by the state or the courts. It was agreed to eliminate the phrase.

Mr. Kramer - The "notice of hearing" provision has always been troublesome to me. It's somewhat unusual. It seems unusual in this context but at the same time the idea of a region just being able to come in and act very quickly and without any guarantee of some time period for deliberation making sure that everyone knows about it I think is a rather awesome prospect also.

Mrs. Eriksson - In this context, perhaps we should look for language which is of a legislative nature. We're talking, in effect, about a mini General Assembly here and perhaps should attempt to write in some of the open hearing, open meeting provisions that apply to the General Assembly rather than doing it this way. We would view it as a legislative act which has to be in a public context and then you wouldn't have to bother with construing who are the interested parties, which was a rather valid objection which I think was raised by Dolph Norton.

Mr. Kramer - Maybe what we need really is a time period of delay between the time the action is proposed and goes into effect. Even if the meetings are open, as they have to be, it would be small comfort to someone who wanted to be heard on it and didn't know that it was coming up.

Mrs. Eriksson - Of course, this objection always come up with the General Assembly, too, but the fact is that the Constitution requires that meetings of the General Assembly be open to the public. I think that a similar requirement would be made here, as well as a provision for delay between the time of proposing and adoption. Perhaps a reference to the relevant section of Article II.

Mr. Kramer - We can refer both to the open meetings requirement, similar to the General Assembly, and then also build in a time delay--take out the provision for notice of hearing, and make it "shall be adopted within a period of " so many days. "Adopted" before final action is taken. First of all, it would have to be introduced and then there would be a period during which no action could be taken, so that people who objected could come in and make their objections known before the final adoption.

Mrs. Eriksson - If you refer to the open hearing provision it will be implicit then that what you're going to have hearings on this proposal.

Mr. Kramer - In the general law, or the charter, you could have that kind of requirement right in the charter that we must have separate readings, etc. but this would be an absolute requirement no matter what the provisions were.

Mrs. Eriksson - Sixty days is probably pretty good. I'm sure that is the figure, that is the average, for a simple bill in the General Assembly.

Mrs. Orfirer - Now what about the question that was raised today about the right of the people to have a referendum?

Mr. Kramer - A referendum, as the term is generally understood, in the Ohio Constitution, applies only to the initial measure. Once the measure has gone into effect, you cannot have a referendum. You can always come in with an initiative and repeal the measure by initiative.

Mrs. Eriksson - The 90 day effective date of bills in the General Assembly is what gives time for a referendum. The General Assembly is going to have to enact legislation providing for this initiative and referendum and I would think that that would be the place to look for that restriction.

Mr. Kramer - We've got the strong tradition of an initiative and referendum in Ohio. If we're going to provide for it at all with respect to these regions, I think it is going to have to be basically the same as with respect to legislation of the General Assembly and municipal corporations. I think that again there would be more resistance to something like this if initiative and referendum were not provided for than might be the case otherwise, and it fits in well with the basic scheme of the whole proposal. This is the real check upon the region, that the legislative authority should be confident of ability to withstand the referendum before going ahead to propose something. So I think it serves a valid function even if there is never a referendum. One more question on language--as it stands now it says that "no such assumption shall become effective unless provision has been made." Do you see any problem with that language? Not that the measure shall not become effective but the assumption shall not become effective unless provision has been made . . . I think the "become effective" language could easily be confused with the measure itself becoming effective.

It was agreed to rewrite the clause.

Mr. Kramer - When the region takes over a function, it could include real and personal property of all kinds and should include facilities to make a distinction between a water treatment plant and the real estate, and of course the language "any necessary and reasonable compensation" is deliberately chosen.

Mrs. Orfirer - Now what would happen if you said "any reasonable and necessary compensation for any property or facilities assumed by the region?" Do you need all the rest of it? There's no other choice.

Mrs. Eriksson - Is it proper to say that the property and facilities are being assumed? It's really the function that's being assumed.

Mr. Kramer - It's using the term in two different ways. "Acquire" has the connotation of purchase and sale. I don't want to get into some convoluted phrase like "exercising control of" or something like that, either so I used short simple words here.

Mrs. Orfirer - Can you eliminate the words "of any political subdivision or unit"?

Mrs. Eriksson - I would think you could eliminate the "political subdivision or unit" because if they took property from anybody else they would have to pay for it anyway.

Mr. Kramer - I will try to think of a different word than "assumed."

Mrs. Orfirer - "The rights of initiative and referendum shall be secured to the people of the regions as to every such measure, and no such measure, except such as are adopted by the people by the initiative, shall become effective until the same has been submitted to the General Assembly and not disapproved by the General Assembly within sixty days from the date of such submission".

Mr. Kramer - I had some question about "such as are adopted by the people by the initiative." I think it looks different depending on how you approach it. If you approach it from the standpoint of the General Assembly's power to veto such action, being a body to which people want to appeal, why then there's no reason for the veto if it has been done by initiative. If, however, you look upon the General Assembly's veto power as a means of ultimate control by the General Assembly then it shouldn't make any difference whether the assumption is by the legislative authority on its own motion or by the people assuming the initiative.

Mrs. Eriksson - I still think that preserving state policy with respect to regions is an overriding consideration and therefore I couldn't see that there was any reason to except something adopted by the people from this veto power of the General Assembly. If it conflicts with state policy, it seems to me that it should not be done. However, on rereading the sentence I am wondering whether or not the sentence is really clear because we say the rights of initiative and referendum shall be secured to the people of the region as to every such measure. On my initial reading of it, I was thinking that the people could initiate a regional function or service assumption of any type but by applying it to such measures did you intend that it only applied to those measures already adopted by the legislative authority? So that in effect that then it would be an initiative of something to repeal an assumption. If that's the intention I'm not sure that it's really clear as to what, by referring back to "such measure" would mean.

Mr. Kramer - I think the initial thought was that people would be able to initiate an assumption.

Mrs. Eriksson - Then the words "such measure" are inappropriately used, because "measure" would clearly indicate, I think, the legislative authority's adoption. Then I think it should say "as to every such assumption" if that's what you intend.

Mr. Kramer - I think so.

Mrs. Eriksson - And then I would renew my thought that I don't really see why the people should be able to adopt an assumption which might be contrary to state policy. If you agree, possibly it would be better, again, to require the General Assembly to provide by general law in this instance, as we have done with the contract provisions of things that cannot be assumed by the regional government, rather than providing for an individual opportunity to veto each assumption. It might not work as well in this case as it does in the contract case.

Mr. Kramer - No. I think there should be complete freedom to assume these powers unless the General Assembly really has some good reason for saying NO in a particular instance.

Mrs. Orfirer - How about the 60 days? Why don't you just say "within sixty days of legislative adjournment"?

Mrs. Eriksson - We don't have an appropriate constitutional expression to use. You're thinking of something like 60 legislative days but unfortunately we don't have a term like that to use.

Mr. Kramer - When they adjourn sine die, it's lost anyway.

Mrs. Eriksson - You can say "the General Assembly has had it before it for consideration for 60 days while it was in session" and then it wouldn't matter what session it is. It would be in effect a way of defining 60 legislative days.

Mrs. Orfirer - Well, isn't there anything else that's ever been done this way? Aren't there things that the legislature has to act on in a certain period of time?

Mrs. Eriksson - No, except for senatorial appointments and they take effect automatically if the General Assembly adjourns without acting on them, and that's the only thing that is submitted for approval by the General Assembly. We want to give the General Assembly 60 legislative days to consider it.

Are we calling them regional units of local government? It doesn't seem to me that "local" is really necessary and it might carry with it some connotations of powers and duties that we really don't want to put in there.

Mrs. Orfirer - Is there any disadvantage to using the term "regions" for these things if we're already going to have the Governor with his regions?

Mr. Kramer - How many terms are available?

Mrs. Eriksson - Several people have, in fact, referred to them as districts.

Mrs. Orfirer - Is there any validity in thinking it might be a disadvantage to use the same terms as the Governor?

Mrs. Eriksson - I think that there's an advantage in that there may be a certain acceptance of the term "region" partly because the federal government uses it and partly because the Governor and the Department of Development are using it. And there is a disadvantage to "districts" of course, that is that it is already used extensively in Ohio law for different special districts.

Mr. Kramer - You always think of districts as being a part of something else. That is the customary usage.

Mrs. Eriksson - "Region" is a little bit confusing. For instance, in Mr. Watkins comments this afternoon he was assuming that these regions were going to be identical with the Development Department's. But you could conceivably end up with different regions which would be very confusing. I think there is a danger in that, but I don't know of any other term that is as good.

Mr. Heminger - "Region" conveys the idea of an area that has something in common.

Mr. Kramer - Let's go back to the Section 1. Shall we say beginning "regional units of government?" in that initial phrase and then say "regions" from then on and eliminate the word "local"?

It was agreed.

Mrs. Orfirer - "The legislative authority of any region may provide for the creation of areas within the region for the purposes of administration, taxation, the provision of services, or otherwise exercising the powers and duties provided for in this section."

Mr. Kramer - I'm not sure that we need the term "governmental". "Governmental" as distinguished from proprietary. That could be taken to be a limiting term for all that they are units of government they have only such powers as governments have.

Mrs. Eriksson - Does it include eminent domain?

Mr. Kramer - The power of eminent domain is already clearly implied in Section 5.

Mrs. Eriksson - But I wonder whether you can imply a power like eminent domain.

Mr. Kramer - Well, municipal corporations have it as a power of local self government. The Constitution doesn't even provide it specifically for the state.

Mrs. Eriksson - Yes, Article I, Section 19, which places limitations on the power of eminent domain which apply to any governmental unit.

Mr. Kramer - It is a home rule power. I think it has always been regarded as an essential governmental power--one that can be restricted but one which any unit of government must have.

It was agreed to eliminate "governmental."

Mr. Kramer - This is an attempt to say something like "regional self government" without using the term. It's defining powers in terms of powers, because you refer back to everything in the previous section. Originally it was all one section. "Necessary and proper" is well established language for this kind of purpose, that's loose and flexible and subject to argument and ultimate judicial determination. The rest of the language within the first sentence is a little awkward. Other constitutions I have seen use terms like "the instrument of government". I wish we could have a shorthand phrase rather than saying--we probably should say "by general law."

Mrs. Eriksson - I don't think you need it there.

Mr. Kramer - We could probably say "to all regions."

Mrs. Orfirer - I think that is perfectly all right. You can repeat the word "denied" for clarity if you want.

Mr. Kramer. It doesn't really read right, though; "regional units of government shall have all powers necessary and proper for carrying out the powers and duties provided for in this article except as may be specifically denied by law to all regions or by the alternative form of government or charter providing for the form of government of a particular region." If the charter denied to one region the power would be denied to all regions.

Mrs. Eriksson - Yes, you could say "or by the alternative form of government or charter adopted by the regions," because both use the alternative form of the charter has to be adopted by the regions.



Mr. Kramer - "Regional units of government have all powers necessary and proper for carrying out the powers and duties provided for in this article except as may be specifically denied by law to all regions or by the alternative form of government or charter adopted by a region."

Mrs. Orfirer - In the next one, on subdistricting, do you need to make a list or can you just say "for exercising the powers and duties provided for" above?

Mrs. Eriksson - We haven't provided for taxation.

Mr. Kramer - I think that's important too, in connection with uniformity. We should make it clear that different areas can have different tax rates.

Mrs. Orfirer - What are we going to do about the question that was raised today about preemption, or what have we done here?

Mr. Kramer - I think that we really have already adopted the conflict approach. In Section 3 where it gives the region power to regulate such development, that is what it is properly called in the conflict section, that if the superior element tells you you can't do something, the inferior unit of government cannot do otherwise. To take a particular example--like police communications and training. The region will simply propose that throughout the region or within an area the region is now going to take over the training of police officers and police communications system. That's all they have taken over, so that leaves the basic operations of the individual police departments untouched. So obviously the region has pre-empted the training and communications but it doesn't do anything by implication. The region can move in and occupy the field to a certain extent. We've got this limitation on the regional power to take over the functions and it must have a regional aspect to it, to the extent that the local unit can't preempt it anyway.

Mrs. Orfirer - Let me give you a for instance. Supposing that the region decides to have a regional police force. Does this preclude a local unit having any kind of police force of its own?

Mr. Kramer - I think it's all a matter of what the regional authority says when it acts. If it says we're going to have a regional police force for purposes A, B and C that is to patrol all major roads, to deal with problems of traffic, and the regional police force shall handle all of those matters but no other--you could divide it up in that way. The FBI has jurisdiction over certain crimes but the local police do also. I think what we've really done is left the power in the region, to determine the exact extent to which it intends to take over functions.

Mrs. Eriksson - But I don't think there's any authority for the legislative authority to prohibit a local government from duplicating functions. In most cases it wouldn't be feasible for them to do so, particularly if the region took over a facility like a waterworks--it would be unlikely that they'd turn around and build another one. I don't see how a region could take over some things like law enforcement without changing state laws--because of such things as the court system--but suppose they could do that, there's really nothing that would prevent a village or township from continuing to operate if they took over a function that didn't involve taking over a facility or property which couldn't be replaced.

Mrs. Orfirer - Are we going to have to go back and revise the present provisions for local government?

Mrs. Eriksson - Yes.

Mrs. Orfirer - There we would have to spell out, rather than here, what they can do.

Mrs. Eriksson - They must be coordinated. You might put a "no conflict with the region and with the state" in the local government provisions.

Mr. Kramer - But what we've said is that the region will assume a function, not just that the region has the power to do something--to me that means that if the region assumes a function, no one else can exercise it because then the region wouldn't have assumed it. As a superior government, it thereby precludes others from exercising it, or interfering in any way with the regional exercise of the power. I wouldn't like to use the term "exclusive" because I think it desirable to leave the flexibility for the region to take over a function to whatever extent it feels necessary or desirable. They might want to take over part and leave the rest to local units. Let us give this some more consideration. What we want to do is preclude any interference from local units with a regional exercise of a power or function.

In Section 6 we have to go back and pick up this provision we took out of Section 3 to permit the state to assign functions to regions. So the General Assembly could abolish some types of special districts, if it wanted to, and assign their duties to regions. Or the General Assembly might determine as a matter of state policy that some new problem that arises in the future should be handled on a regional level. If the General Assembly does assign functions to regions, it should be by general law, not specific laws for particular regions. We will make these changes in Sections 4, 5, and 6 and submit it to the committee again.

Mrs. Orfirer - Should there be a provision for funding of regions, or anything about taxing powers?

Mrs. Eriksson - There could be an implication in the "all powers" language that they would have the same powers municipalities have--which includes the power of taxation. There is no provision in the Constitution about counties--how they get money. If you want to give them power to levy property taxes outside the ten mills without a vote of the people, you would have to be specific, otherwise they would be precluded by the ten mill limit. The General Assembly can give them the power to levy outside the ten mills with a vote of the people.

Mr. Kramer - It would not be advisable to write into the Constitution specific provisions that regions be given particular tax sources or specified portions of particular funds such as the local government fund because that would be an undue interference with the General Assembly's powers.

Mrs. Eriksson - I think we have to assume that the General Assembly will fund them initially, otherwise the first act of the regional unit of government would have to be to levy a tax, before it could even pay salaries.

Mr. Kramer - The mandate to the General Assembly to create the regions implies a mandate to provide what is needed for them to operate, and that, I believe, could be upheld in litigation.

Mrs. Eriksson - They would never even come into being if there weren't some money to get them started.

Mrs. Orfirer - We might have to go back to the first sentence where we mandate their creation and mandate the General Assembly to fund them also.

Mr. Kramer - You have to be careful of that, because the implication is that the General Assembly should provide them the means of supporting themselves, not that the state would always provide all the moneys for the regional functions. Maybe state assistance, but basically, as presently with local government, providing the means so that they can support themselves. As they take over functions that are revenue-producing, they will pay at least some of their bills from those revenues.

The meeting was adjourned.

Summary of Meeting

The Local Government Committee met at the Athletic Club at 6 p.m. on December 14.

Present were Chairman Orfirer, Messrs. Calabrese, Fry and Heminger, Mrs. Hessler, staff members Kramer and Eriksson, and Mr. Paul Baldrige of the Mid-Ohio Regional Planning Commission, and Dr. Ira Whitman, Director of the Environmental Protection Agency and Mr. Allen Farkas, Deputy Director of the EPA.

Mr. Baldrige - The Mid-Ohio Regional Planning Commission is studying an eight county central Ohio region. The eight counties are the counties that will most likely be designated by the Governor as a state planning service district, and all of the proposals to date have identified these same eight counties--the report made by the Department of Economic and Community Development and the report by the Governor's Commission on Local Services. These are Franklin and six contiguous counties, plus Fayette. These counties are characterized by extremely rapid growth and change. We'll be adding about 316,000 people in the next eight years. If you extend that to the year 2,000, we'll be adding over a million, which is like adding two Columbus to the region. So it makes for very rapid growth in the region and a large metropolitan area spilling out into the adjacent counties. Most of the counties are not very well prepared to deal with the growth and the change that is coming; about three of them have effective planning commissions. They react to crisis by crisis. So what we're really looking at is to set up some kind of area-wide agency that can determine what the region should become in the future and to solve some of the problems that are regional in character and don't respect political subdivision boundaries. Also, to become directly involved in the coordination of and working with the various federal and state agencies that would be conducting various kinds of planning and administering various programs in the region. Of course once these regions are designated the Executive Order will require all state agencies, boards and commissions to conform to these regions for planning purposes, administration of programs and services. We have some 360 different regions being used by the boards and commissions.

We're really charged with deciding what type of an agency we need, what type of representation it should have, what its powers should be, what types of functions it should perform and how those should relate to the functions that should be left to local governments, how it might be financed, a possible need for legislation. The study work is to be completed by July. It's being perfected in cooperation with the various units of local government and the Department of Economic and Community Development. It's funded by HUD, a grant from HUD to the state. We're having meetings in the counties to try to get the feeling of the people. Generally, we find that there is frequent support of the need for getting together and deciding what central Ohio should become. On the other hand, there is a great deal of concern about being involved in a large metropolitan area. If you talk to the people immediately adjacent to Franklin County they are concerned about the growth and don't know quite how to deal with it and feel they need to do something. If you're talking to people on the other side of the county they kind of want to ignore it. There is a great deal of concern about how an agency like this should be structured as far as representation. I am sure you run into that in the Cleveland area. The outlying counties are particularly concerned that they not be dominated by Franklin County, which would mean there couldn't be the one man one vote concept but it would be representation so that all interests were represented, local governments and functional interests.

Mrs. Hessler - Do you mean that you would have representation of functional interests on a so-called board?

Mr. Baldrige - This has not really been determined. The climate here is much more favorable to do something like this than it is in other parts of the state

Mrs. Hessler - If you're giving consideration to the possibility of this becoming a government in the sense of performing of certain functions, can you get away from one man-one vote?

Mr. Baldrige - Perhaps not. I have looked at your proposal for regional government. From my own experience in local and state government it's not very likely to go from where we are now to a regional form of government in one step. One step at a time. The first step would be to set up an area-wide agency and delineate what function should be performed and effectively do some of those so you build some mutual trust. One of the things we will be looking at is the need for broader implementation powers than having implementation by existing local units which often does not work.

Mrs. Orfirer - How can you get local units conform?

Mr. Baldrige - If you don't belong to a regional agency, they you're not going to qualify for federal funds from EPA, HUD, and others. A number of the federal agencies have set July of '73 as a cut-off date, and they're going to get touch--because there is a lack of money. Another incentive to participate in the regional agency is from a local standpoint, for the first time, the state is designating these local districts. The local people get quite concerned--they think well, this will make quite a change--if the Governor is really going to set up districts and do all its planning through them, we had better set set up so that we can have a voice. On the other hand, without exception, you find a very strong feeling among these people that they should implement things--particularly control devices--the administration of such things as subdivision regulations. And planning regulatory devices--they seem to want to continue those on a county level, such as building codes.

Mr. Kramer - The counties around here are different from those in the Cleveland area, where everything is done on the municipal level.

Mrs. Eriksson - In your meetings have you talked at all about the performance of actual service functions by any units of government larger than counties?

Mr. Baldrige - Only on a very superficial level. That will be the next round. The first of the series of meetings was just to explain the study to them and get some general participation. Now we'll be going back. I think there is support for the need of an areawide agency to determine an area's future, to solve some problems that are areawide in nature and to play some part in the coordination of the state and federal programs.

Mrs. Hessler - The federal government wants the state to be strong and to insist on local cooperation. What have the township trustees been saying to you?

Mr. Kramer - I assume that the township trustees are involved mainly in road problems-- have they gotten into police and fire protection or any of the other areas?

Mrs. Hessler - Are all these counties outside of Franklin County really rural?

Mr. Baldrige - Not so much Licking and Fairfield, and Delaware--Madison and Union are.

Mrs. Hessler - All residential?

Mr. Baldrige - Yes, and it mainly is Columbus filling out that way. Jack Nicklaus just announced six weeks ago a planned development of 6,000 around the Delaware county line--now this is an example of one of those problems that crosses the county line--it's about 1/3 in Franklin County and 2/3 in Delaware County. Six thousand housing units in addition to three golf courses--I think we'll be seeing a lot more of this in communities. But most of the people feel like this is the only way we can make any sense of what central Ohio can become. Columbus can become a city of 1, or 3 or 4 million--or should it be limited to more moderate size encouraging satellite communities to grow--and even new communities.

Mrs. Hessler - Do you look upon this study as a study for this area or do you look upon it as a model for other areas?

Mr. Baldrige - Well, we're primarily concerned with this area, although I think it is being looked at as a possible model. The Department of Economic and Community Development originally asked three areas to do this. Central Ohio was asked because this is one type of area in the state--where all the counties are contiguous in a large metropolitan urban center. They asked Ohio, Kentucky, Indiana and they they asked Appalachia because it was a good example of a nonmetropolitan rural region. In Ohio right now we have these areawide agencies formed under five different statutes. They can be nonprofit corporations; they're councils of governments; they're regional planning commissions; and some of them are just a series of contractual agreements between local units of government.

Mrs. Orfirer - How do you see this one?

Mr. Baldrige - We really don't know. Perhaps there is really a need at this point for some new legislation--no existing statute provides the implementing powers that you really need to effectively carry it out.

Mrs. Eriksson - Are you thinking of land use controls?

Mr. Baldrige - Probably land use--some kind of urban growth policy. In other words, if we're really going to determine in this region and the other regions that certain land should be set aside and retained for future agriculture, how are we going to do that? We probably have the criteria to identify it now, but it's quite another thing to control its use. I think that to have an effective land use policy, or growth policy as I prefer to call it, the state would have to assume leadership. You would have to have some strong policies and guidelines, and I think that they can only be effectively implemented at the state level.

Mr. Kramer - We can't lose sight of the fact that the state has probably plenary power in that area if it would choose to exercise it. It's more a political question than a legal or constitutional question.

Mr. Baldrige - I'm not thinking so much in terms of state zoning powers here as I am land use. In 1969, when I was with the state, we did a statewide land use study, and it was the first time that had ever been done on a statewide basis. We just



looked at the changes in land use in Ohio between 1940 and 1960. I was asked to talk to an agricultural group that was having a state convention, and they asked me to speak on preserving land for future agricultural use, which was interesting to me, so I thought I'd do a little research on that before I talked to them. I went up to Ohio State--I thought certainly with the agricultural college we have, somebody has done a lot of research on this, somebody know exactly in Ohio where the agricultural land is that ought to be preserved, and even has ideas about how this should be done. But I found that nobody had ever done anything about it. Everybody has always been concerned about this, but nobody has done much about it. It really has to be tied into a national effort, but I think it will only ever be implemented at a state and an areawide basis. I don't think we'll ever have a national policy.

Mr. Kramer - Speaking of state involvement or enforcement in this, we just learned recently that the Florida legislature has passed what is being called the Disney World Law down there because of the large impact of Disney World on large areas of the state. They didn't see that coming, and they hadn't done anything about it, but now Florida has established a policy under which various areas of the state can be determined as areas of critical state concern.

Mr. Baldrige - Several of the states have done this sort of thing, particularly as it affects environmental areas--like California, for instance.

Mr. Whitman - The San Francisco Bay Commission is one good example of several units of government getting together to attack several problems which are all related in the environmental area. But it also pertains to the land use and shore line of San Francisco Bay, to the prevention of filling of San Francisco Bay, etc. You need, I think, the alarm that you're losing something before you do anything about saving it. That's what happened there, and that's what's happening in Florida.

Mr. Kramer - First of all, take it on the zoning level first, because it's a police power. But as I said it's a matter of conflict because the home rule power includes the police power. It includes all powers. But the state cannot exercise its powers by telling municipalities you can't do something. The state must act.

Mrs. Hessler - Now let's assume that there is a regional agency two years from now which has made a plan for lakefront development in Cleveland it's of regional interest because of the value of the lakefront. Would this regional agency have the power to stop development on the basis that this is a police power and the way the state can get into it to stop this kind of development, within the municipality.

Mr. Kramer - The region would have to be given this power. The General Assembly has the power to control zoning, I think, only by entering the field itself and legislating, because the way the conflict clause works is that the municipal ordinance or regulation would be invalid only to the extent that it conflicts with the state general law. We talked about the case where the state attempted to tell municipalities: if you adopt an ordinance regulating door-to-door selling, you can't do certain things. That was held to be unconstitutional, because what the conflict clause means is that if the state itself regulates this under the police power, then the municipal ordinance which conflicts with this state regulation is invalid.

Mrs. Hessler - Would the state then have to pass a law saying a regional planning agency which has determined a plan for this area shall supersede the local government

powers--and would this be constitutional if the state did it?

Mr. Kramer - Well, there might be a real question there of delegation of legislative authority, and how far the General Assembly could go in implementing the regional plans.

Mrs. Hessler - They could give planning powers to a county--why couldn't they give them to a region?

Mr. Kramer - You're talking about powers of implementation now.

Mr. Whitman - What you said before about the state having this police power, the state can, through legislation, supersede local zoning, and then the second phase of what you're saying is the state would have to delegate that authority to some local body, one which differs from the original township or municipality. The Power Siting Commission that we've just formed supersedes local zoning when it comes to the location of power generation facilities and high voltage transmission.

Mr. Kramer - We've got the high voltage case indicating that so it's hard to give any definitive answers until you get into some particular problem.

Mr. Whitman- The state has to legislate itself into having that power. The state could not step into the zoning power of the apartment complex, because it hasn't given itself the authority under which to do that.

Mrs. Eriksson - How is the power siting commission going to work?

Mr. Whitman - The two provisions under the legislation require certification of specific projects as applied for and urge utility companies to submit an annual ten year plan. Now, the commission plans to carry out a third function, and that function will be to develop a statewide plan of its own, as a basis of judgment for the submission of plans and applications that come in. So there will be a general state plan and there will be specific ten year plans required of each of the utilities, and then the two will be compared with each other, and specific applications for cities will then be based upon the plans which are set forth.

Mrs. Hessler - And you think that this will be constitutional if it conflicts with what has always been considered to be a local power like zoning.

Mr. Whitman - Yes. I'm not competent to judge on the constitutionality, but I would be convinced that the question had been resolved before that type of power had been given to the commission. So I would believe that it was constitutional, just on the basis that I'm sure that it had been looked into.

Mr. Kramer - The Painesville case to prevent the construction of high voltage transmission wire would be in support of this. The court said that the General Assembly had by legislation regulated this type of construction and local regulations could not conflict with the state regulations. I think it's important to know and to understand that the state really has to go in and directly regulate itself by its own action before a municipal ordinance can be in conflict with that act. It can't just tell a municipality you can't do this or you can't do that. That is in the area of home rule, and even in the area of the police power that can't be done. That's because that conflict language in Article XVIII, Section 3 is very important.

Mrs. Hessler - But when you're saying that this should be a constitutional delegation of power, are you simply saying that you don't expect the legislature to do it, and therefore it has to come from the constitution? Or do you think maybe the legislature is going to run into constitutional problems?

Mr. Kramer - It becomes a question of the degree of delegation of legislative powers and what the court says about it. The General Assembly can't do everything, and it can delegate certain functions to boards and commissions and administrative offices, but at some point you cross the line where there can be a delegation of legislative authority, and then you run into a question of an order or a directive issued by some regional agency, with which a municipal ordinance or direction would conflict, and you have the questions raised directly that you have a delegation here and whether or not this is permissible, rather than a mere administrative action pursuant to a statute, which has sufficient standards.

Mr. Whitman - Regional operations of one kind or another appear to be the most logical arrangement to handle the critical environment problems that we have. The air, the water, and the solid waste--we operate, or local government operates, on a variety of regional levels now, most of which don't do a very good job, and most of which don't cover the right territory, so this is something we're faced with all the time. We have a general policy of favoring regional approaches to solving these problems, but having them implemented is very difficult, and it seems to vary greatly from region to region within the state.

Mrs. Hessler - What kind of implementation problems have you run into?

Mr. Whitman - The most common is sewerage--just to bring about regional sewer districts which cover a broad enough area--the classic case is in Cuyahoga County which involved a dispute between the suburbs and the city for many years, and finally it was the action of the Pollution Water Control Board that put the question in the lap of the county court and led to the creation of a regional district. It remains to be seen how well the regional district will perform. But this is our critical problem in relation to regional government. It is not in the planning area--although I believe that we don't have adequate regional planning--but the real area of trouble comes in operations, and I'm sure this is where the constitutional questions would come up also--how do you operate a regional sewer system? We have 13 pollution control agencies around the state that are local--in which we delegate to them certain functions within the state's legal authority. We delegate authority to the City of Cincinnati air pollution control agency, and then they contract with Hamilton County, Claremont County and several others, and cover those counties. So it is a really strange animal.

Mr. Kramer - Dr. Whitman, I take it that your problems are not so much in planning or really setting standards or even enforcing the standards but in order to meet these goals you've got to have somebody out there operating sewage treatment plants and building.

Mr. Whitman - Right. It's not to say there aren't serious problems in planning, but these aren't as serious as the implementing, operating and financing plans.

Mr. Kramer - Running the facilities and that kind of thing.

Mr. Whitman - And it's a question of rates, between central city and suburban areas.

Mrs. Eriksson - Then it would seem that you see in the structure of government itself some of the solutions to some of your problems. You don't view contracts as being the solution to the problem.

Mr. Whitman - I don't think so. I think we have to have regional agencies of some type capable of operating the facilities. Clearly, with a lot more scope and a lot more authority than we have now in the state. I do have a fear on the other end of the spectrum of creating such agencies as the Chicago metropolitan Sanitary District or the Port of New York Authority which are almost beyond control in assuming new functions. That I would not like to see. But I think we're not even close to those kinds of things in Ohio. I think we're a lot further away--on the weak side.

Mrs. Hessler - You have the clout that helps in being a state function, because the reason we got a sewer district in Hamilton County was because the state has the health function and could say no more building money.

Mr. Whitman - The sewer connection ban is probably the most effective enforcement tool we have against municipalities. It's one which creates an awful lot of problems. But it's the only one we've found that really begins to help.

Mrs. Hessler - Now you've got this power which leads directly to the power to give to regional agencies an operating function. In other words, if you decide to say that air pollution control should be on a regional basis, can't you invoke the state's health authority?

Mrs. Eriksson - Not without the legislature saying so.

Mr. Whitman - I think there's a rather important distinction to make between the operation of a regulatory program and the operation of waste collection and treatment. Now the air pollution agency question that you're talking about is the operating of a regulatory program and there we do have the authority to delegate responsibility to a local agency under contract and that's fine. The crux of the problem is in the operation--

Mrs. Eriksson - You actually have the authority to delegate responsibility or to tell somebody that they can't operate the program because they're not doing their job?

Mr. Farkas - We have the responsibility to delegate and

Mr. Whitman - Local government has the authority to enforce the state pollution regulations. We have the authority to delegate to local government the various program functions needed to carry out the state's overall program under federal law. With those two authorities, the one which they have and the one which we delegate to them, we can then operate an air pollution control program having local government units cover regions within their own territory.

Mrs. Hessler - Is that a regional agency?

Mr. Whitman - They are in the position of having to work out the local arrangements--that's why in an area, three counties will contract with Cincinnati and create a regional air pollution control agency, and that's why in another area, the county and the city will not get together, and there are no formal arrangements at all. We can delegate to the city of Cleveland the authority to do engineering work, and we

cannot enforce that delegation but it's a matter of local government determining to make things come under local control. If they did not want to do that, then the only option we have is to take over the program.

Mrs. Eriksson - So if you decide, then, that Columbus is not meeting the state standards in air pollution control, your only option is to take it over yourself.

Mrs. Hessler - Or could you delegate it to a regional agency?

Mr. Whitman - Well, it would be very impractical to create new air pollution control agencies. The reason we are working so hard with the local agencies is that many of them have been in existence a long time--many of them have the expertise and the knowledge of the local scene.

Mrs. Orfirer - Why would it be hard to create a regional air pollution agency?

Mr. Whitman - They would be starting from scratch in an area where we have some experience. So if we wanted in one of the areas of the state not now covered by a regional agency, to have it be covered, the best way is to do it ourselves. For instance, Ross County, Chillicothe, has had one person working in air pollution who they have gotten on the emergency employment act. They would like to extend that into a full fledged regional air pollution control program, but the amount of gearing up and the things that they need to do to become competent enough to carry out a program will take time, too much time--it is not worth the effort at this point. We would prefer, we think it would be better for that county, just to be part of the overall state program.

Mr. Farkas - There's no particular advantage to having a delegation of regulatory responsibility to a regional authority or to a local authority. We're doing it frankly as a matter of expedience. It's expedient because the local resources are there; it's a new responsibility, and the state wanted to take advantage of local resources. Now with respect to operation, of waste collection and treatment--you were talking about water and solid waste--there is an advantage to a regional approach. You can do it more efficiently and you can provide for an approach that is better substantively.

Mrs. Orfirer - Can you create such a region for this?

Mr. Whitman - No

Mrs. Hessler - Mr. Baldrige, do you look upon the job that you have as including the determination of which functions should be controlled by the state through regional areas as opposed to those which should be controlled by a regional agency?

Mr. Baldrige - We'll be looking at that, although I think we'd be giving more attention to defining those matters of regional concern as compared to local concern.

Mrs. Hessler - I hadn't thought of this particular problem before, but it seems to me that this is an important problem--which functions are basically state functions that could be better performed for legal and other reasons through the state-delegated service districts, which might be the same kind of regional problem that the regional government created, would determine its boundaries.

Mr. Baldrige - We'll obviously have to take a look at that because one of the things that people are concerned about is how one of these areawide agencies would coordinate and work with the various state agencies on their programs and planning within the regions.

Mr. Whitman - The state of Maryland has gone in this direction. They have created what is known as the Waste Acceptance Service which is basically the state utility for garbage collection and sewerage disposal. I'm not sure how they're operating that--I'm sure they're not covering the whole state--but basically, they have the authority at the state level to operate any waste collection facility, solid or liquid, as a utility. That's probably the furthest that any state has gone in the direction of state control.

Mrs. Eriksson - Going back to the Power Siting Commission, what is your connection, if you have any, with the Public Utilities Commission of Ohio?

Mr. Whitman - Well, the chairman of the PUCO, the director of EPA, the director of development and the director of health all sit on the Power Siting Commission. There is no formal relationship with PUCO. The commission was designed as a one-stop regulatory evaluation place, rather than have to pass through zoning of local government, through our environmental regulations. All of our pollution control regulations will be in effect, but the EPA in fact will lose the direct authority over those regulations for the new power facilities which will be built. It will be done through the commission. It includes major generating stations, major transmitting stations, and high pressure gas pipelines.

Mr. Farkas - The significance of the commission is something that you touched upon--it's the only place--the first time the state is directly regulating land use in the private sector. And it's a recognition on the part of the legislature, and I believe a correct recognition, that there are certain kinds of land use decisions which not only transcend the local boundaries but also transcend what might be the regional boundaries and should be decided on the state level--so when you talk about land use, you're probably talking about a number of different classifications of decisions--those that can be left purely up to local zoning, those that should probably be made by a regional body, and those that should be made probably by the state.

Mr. Whitman - Other states have gone further in this area too. In the state of Maryland the state is empowered to buy sites for power facilities, and this avoids the land speculation and so on which occurs and has always occurred in that state.

Mrs. Hessler - Has any state the power to buy land for future use?

Mr. Whitman - This is specific authority to buy land publicly on which ultimately private facilities will be built. The point is to purchase the sites and reserve the sites, and to use them when needed.

Mrs. Hessler - Does Ohio have the power to buy land in order to preserve it? For future use?

Mr. Whitman - I don't believe that it does unless it has a specific purpose.

Mr. Kramer - Yes it does--for parks and recreation.



Mr. Fry - We give the counties the power to obtain land for industrial development and they can finance such purchases with revenue bonds.

Mrs. Hessler - Could they do this in order to prevent people gambling on what was going to happen to the future land?

Mr. Fry - I don't think it goes that far, and I doubt very much if they think that far. The counties do it when some industrial organization comes in and says we're going to build a ten million dollar plant and we want some land and we want some industrial bonds to finance it.

Mr. Kramer - The problem with trying to do this in advance is that you wouldn't have any income to pay off the bonds. And we've got the overriding public purpose concept in the state too, so you'd have a problem of just buying up land and reserving it for future private development of any kind. This comes directly within the terms of Article VIII, Section 13. Have you a theoretical plan of the number of facilities that would be needed and where these facilities should be located?

Mr. Whitman - This has been done statewide, because it is a federal requirement for construction funds. The federal EPA requires that there be river basin water quality plans throughout the state as a basis for determining the construction of new facilities, as part of an overall plan. The plans have been expedient because of the federal requirement. On the other part, they have used their approval or disapproval of plans as a means of controlling the flow of construction money. Where they have determined not to have money flow, they have used the inadequacy of the plans as a reason for not funding. Where there was sufficient funds and they wanted to make it available, the plans were no obstacle. The new federal water legislation which passed in October, does set up a new areawide requirement for water quality, an overall requirement, for planning around the state. If you take the legislation literally, it balloons as a very important factor in the whole future of water pollution control, statewide and nationally. Information we've had is that that part of the bill is going to be deemphasized and will be much less important than one would read. Allen knows some more about those requirements, but basically we're in the position of having to name statewide various regional planning agencies or bodies to carry out this work.

Mrs. Eriksson - How is this going to fit in with the Governor's planning districts, or isn't it?

Mr. Whitman - Well, we have had some consultants, assisting us in gearing up for the provisions of this federal water bill. They have recommended that we in fact conform to the Governor's planning districts as the basis for these areawide planning commissions. Now there will be a lot of opposition to this from agencies around the state which are formed on river basin lines. ORSANCO is not really in the water quality planning, but the Miami Conservancy District, which serves not only for flood control but for water quality management planning, in the Miami Valley would very much like to have the state designate planning agencies be on a river basin line. The river basin question is very interesting.

Mrs. Hessler - When I was in graduate school, we had a year's study on a river basin located halfway between Baltimore and Washington, not unlike some of the situations we have here in Ohio, in the metropolitan areas. I was on the committee looking at governmental arrangements, on how to manage the river basin. And after a year's time

it was my conclusion and my committee's conclusion that management arrangement based on political reality was more important than one based on hydrologic boundaries. I think there has been a shift to this kind of thinking in the last ten years or so, particularly where you've got really small streams and dense areas of population.

Mrs. Orfirer - The new districts in many cases do conform to the river basin, in some they don't but in some they do.

Mr. Whitman - The overlap isn't too serious. This would have to be accommodated. This is where a certain measure of state control would have to be employed. We can do this under the federal water act. There's been a trend in federal legislation over the last half dozen years--strengthening the relative role of the state in the areas of environmental protection. In 1967, the first major air pollution act of the federal government almost ignored the states, and it set up nationwide 300 or so air pollution control regions--there were 14 in Ohio--and these regions for three years were very significant geographical groupings and agencies which did planning in the region, and so forth.

Mr. Farkas - And you can use that logic and say that the federal government should be the regulatory agency and in fact the federal government, for air and water, has the basic policy responsibility, because they set the basic standards. It's a lot easier for us to take regulatory action that might close a foundry in some county than it is for the county commissioners to do it, obviously. By the same token, it's a lot easier for the federal government to impose standards that jeopardize Ohio from an industrial standpoint than it is for us.

Mr. Kramer - Isn't it true that when talking about doing things on a regional basis like this there are always a number of compromises and accommodations that you have to work out? Obviously, even for a single function, you probably couldn't get universal agreement on what are the ideal boundaries, and when you talk about multiple functions you have to deal in a large degree in arbitrariness. So you really have to do the best you can with what you're working with. If you solve a lot of the problems, you're a lot better off than if you don't solve any of the problems.

Mr. Whitman - I think that's true. I think if you look at the water quality, you're better off having a group of county authorities that had part of the basin, than a river basin authority that only has part of a county. That's the trade-off that you have to make, and it depends in part on what you're trying to do. The more functions you try to carry out under the same region, if we were going to uniform districts, and we would use it for environmental protection and highway planning and everything else, the more misfits you'll have. I think you'll just have to concede that as accompanying uniformity.

Mr. Kramer - The problems have to be overcome at the state level. The state has to provide the measure of control or interaction to make sure that a problem that crosses two regions--that either those two regions work together or the state provides the solution, when there is a difference. But you don't see anything necessarily inconsistent or detrimental from your standpoint of being in a region that also had these other functions?

Mr. Whitman - I wouldn't see any problem there.

Mr. Farkas - On the contrary, it is desirable to talk about air pollution and transportation together. There are two sets of state districts being proposed; one,

the state administrative districts--the current plan is 10, and the planning districts--6. Five of the ten administrative districts are subdivided, making 15 or maybe even 16, for the purpose of planning. The Governor is looking for a commitment from each state agency in terms of the 10 administrative districts. What this means for Ohio EPA--we have 4 district offices right now, we really narrowed the arrangement from the health department. It would mean that the boundaries from those four districts would be contiguous with the 10 administrative boundaries. We don't have to have 10 district offices, but if we have 4, then they cannot cross the 10 district boundaries. The idea is that the Governor will at least exercise his power over the executive department to see that all the executive departments are administered in this way. Now, the question of to what extent the Governor has authority to influence the creation of the 16 planning regions is another question, and it's more complicated. From what I know, the Governor is expected to take action in the near future.

Mr. Whitman - I think it would certainly have to be a legislative matter if new districts were created that in some way assumed the functions of planning districts.

Mrs. Hessler - The federal government says the state has to have a statewide plan. Well, obviously, they're going to plough together and haul out a regional plan, but I don't understand why the Governor doesn't have the right to say, when we distribute federal revenue sharing, we're going to distribute it on this basis. Or does the state legislature have to agree with how that is going to be done?

Mr. Kramer - I think the latter, and besides that, there would have to be federal certification of these planning areas, and the ultimate decision as to the districts and how the federal people are going to work is up to the federal people.

Mrs. Orfirer - The assumption that the Local Government Services Commission is working on is if these regions are set up, that the federal government will accept the regions. Does the EPA have the powers that you need?

Mr. Whitman - We think we have the constitutional authority but we don't necessarily have the full set of powers through legislation that we might need to carry out our basic constitutional authority in terms of a good environmental protection program. Translated, that says that the Constitution does not have to be amended in order to provide for strong environmental protection, assuming that the legislature acts.

Mr. Farkas - The only caveat to that is the question of regional approaches to the operating, but in terms of our regulatory authority, the limits are not constitutional, but legislative. But in terms of regional approach to regional districts in terms of water or solid waste, we'll see some changes.

Mr. Whitman - We cannot bring about the optimal kinds of regional arrangements needed to do the job under the present Constitution.

Mr. Kramer - In a sense your function is more negative than positive, because you can set standards and you can impose building bans, but you can't go out and build anything.

Mr. Whitman - We cannot dictate the form of working relationships between communities and so on, which will best do the job.

Mr. Kramer - There's no real rapid change now from what there was before the creation of the agency with respect to that. You could be more effective in doing the

same thing, but as far as the real power relationships with respect to that change, it's still up to local governments or municipalities or counties or regional sewer districts to actually get the facilities under way. And all of the plans and regulations don't mean very much unless you actually get someone out there seeing to it, and finding a place to get rid of the solid waste.

Mr. Whitman - In a nutshell, that's right.

Mrs. Hessler - Do you have any problems with special authorities? Can you supersede this kind of an agency?

Mr. Whitman - We can supersede them in certain of their functions. Certain of their functions which they are now carrying out, such as the construction of sewerage treatment plants, they serve basically as the basin water quality agency. They do that primarily because we let them, but there are others of their function which we have no control over, and probably no state authority does. Unless there's some rational set of authorities that are developed in a sense to supersede all the fragmented ones, you're just going to have more and more fragmented ones.

Mrs. Hessler - If the state were to say, now, we're going to dissolve these authorities, and give their functions and responsibilities to some government that included the area, then it would be forced to say that local governments aren't equipped to do what we want them to do. Previously, the state said let's solve this sewer problem with the sewer districts, or a sewer authority, instead of forcing the county or setting up a government to do it.

Mr. Kramer - I think we've heard Commissioner Pokorny especially talk about it in this committee many times, about the way he sees the relationship between Cleveland and Cuyahoga County as being one where Cleveland is trying to turn over to the county or a major district all the touch problems that there are to solve, and maintain the balance. There are many people who are looking at the situation in Cleveland now who would say that it's really a shell of a government compared to what it was 20 years ago, because so many functions have been spun off.

Mr. Whitman - Columbus is, perhaps, aside from political or philosophical objections to the regional government, is as ideally situated as any city in the state to carry out some form of regional government. The geographic confines are the simplest of any city in the state. For that reason, if viewed properly, this area has an awful lot of potential. It's the only really perfect opportunity to design the area properly, if it's used that way.

Mrs. Hessler - This is one of the tragedies of permitting courts to make law. Because in Hamilton County the courts have said we could not use the water club for annexation. They made the law. The city passed a law that said you had to annex if you got water from the city, and the court said no you don't. So the thing is to get the statutes that will permit it to happen instead of leaving it up to the court. This is the reason we put government at a higher level--this is the reason the Feds finally come in.

Mr. Kramer - I think you'll find that most judges are the first to admit that they are not the ones and that they are not equipped to create governments. They don't have the fact-finding facilities. But sometimes the question of somebody having to make the decision, if everybody else fails to do it, places the thing within the

courts. The court has no place else to pass the buck, and they have to make the decision even though they don't like to make the decision.

Mr. Kramer - In Cuyahoga County there was no solution in sight, except to do what was done. Many people have admired what was done, and they like the solution. But really to this date, little has been accomplished.

Mr. Whitman - From what I know of Ohio, any attempt to change the basic structure of local government is going to be an awfully difficult change to make. How does this committee view its mission and its chance of succeeding in bringing about some kind of meaningful change?

Mrs. Orfirer - First of all, I'll give part of an answer and then you all can join in. I think one of the things that we recognized very early in the fame was that it was important to leave those structures that do exist with a continued existence. We are not, I don't think, any of us, contemplating eradicating counties, all of a sudden. If we were starting from scratch, we certainly would not be creating 88 counties, but we're attempting to propose something which will evolve gradually, and develop powers, rather than setting up a whole government with many powers, all over the state, all at once--that kind of thing. I think we've really not made any firm decision, but in our talks about whether such a thing could be implemented, I think we're banking on the fact that local government is not working, and everybody seems to recognize this. It's breaking down further and further, and if we want to maintain a good, strong, sound local government, there have to be changes made. I think the fact that the Governor hopefully is going to instigate these regions is going to be a help to us, because people will become accustomed to thinking in terms--more--of regions, and will begin to see it working effectively, hopefully, in those areas where it is implemented, and perhaps take some of the fear of an unknown out of it for us. I think that we feel that if we determine that this is the right path to follow, and even if it is defeated the first time around, then that is not so serious. It's one of the advantages of a commission--we have a ten-year life, and if we've gone this long without regional government in our country, then we can live another five years and continue an educational process, and bring it back a second or a third time.

Mrs. Hessler - Do you feel that there is no value in having a decision-making process for air and water pollution problems at a regional level? In other words, do you feel that they should be state and federal and then the implementation of controls, regulations and so on at a regional level?

Mr. Whitman - The implementation regional, but the regulations state and federal.

Mrs. Hessler - Well, I feel this way too, and so in this particular case, there isn't any problem, but when you get to the problem of controlling the growth of areas, if your boundary lines are set up right in the regions--including the growth areas of metropolitan business--then I don't know. I think this is a real problem.

Mr. Kramer - Even in the area of regulation, it's not a matter of being exclusively state and federal, versus local regulations, and so on, because there is room for broad regulation and room for detailed regulation too.

Mrs. Hessler - Yes, but the problems you get into in the city are problems of the people who feel locally affected by regional planning. In the central cities for example, the blacks who don't want the location of highways made at the regional

level--although the location of highways out to be central to the growth plan. This is true of a whole lot of services. People feel threatened by having the decision-making at a regional level.

Mr. Kramer - There's a lot of that. Let's go back to the example that I brought up earlier, about the people along one street which is a major access along the road running along Lake Erie, to a major interstate highway. They feel threatened by any further development because it means more traffic going in front of their houses. Now what's the solution?

Mr. Whitman - If you have some predetermined plan of some form, and then the people themselves--they can make the decisions where they are going to locate--and they have access to the plan, then the people on that small street will know--

Mrs. Hessler - That's fine on a frontier development--that's why it's so important to do that on the frontier, and not when you already have settlement.

Mrs. Orfirer - Well, our priorities are always the same, and I think this is our problem, particularly in the area of highways. It's a matter of deciding that there are more important priorities than highways.

Mr. Kramer - That gets into another question: It has largely come down in many areas to a battle between highway planners who really aren't very much subject to political control, because planning is a subject which has become divorced from representative government. I think what we're talking about in respect to this committee's proposal for regional units of government is all of these planning, regulatory and service functions would be under the direction and control of an elected legislative body to get away from the situation we talked about before of special purpose districts which have been set up mainly to insulate them from political realities and accountability--so that they can exercise one function, and all of these other functions being able to do what they have to do without having to fight political battles, to fight the battle for money, fight with the local people--because they don't have to stand for re-election.

Mrs. Hessler - This is a tremendous educational problem.

The meeting was adjourned.



Ohio Constitutional Revision Commission  
Local Government Committee  
December 15, 1972

### Summary of Meeting

The Local Government Committee met at 9:30 a.m. in House Room 11 in the State House. Present were committee members Mrs. Orfirer, chairman, Mrs. Hessler, Mr. Heminger, and Mr. Russo, Staff members Mr. Kramer and Mrs. Eriksson, Mr. Ed Loewe, Chairman of the County affairs Committee of the Local Government Services Commission, Mr. Hiram Shaw, staff member with that commission, and Mrs. Liz Brownell, representing the League of Women Voters.

Mrs. Orfirer: Part of this meeting is to give an opportunity for the Local Govt. Services Commission Committee on county matters to meet with our Constitutional Revision Commission Local Government Committee to discuss the two different proposals which the groups have tentatively worked out for the purpose of classification of counties. If at all possible and reasonable it would perhaps make more sense to agree on one proposal by both groups rather than having several different ones.

Mr. Loewe: There are three things I would like to communicate to you. One is the consideration of the classification of counties; two the background work of our sub-committee; three, to see if we cannot decide on inter-involvement between our two groups.

Mrs. Orfirer: We are proceeding to study all aspects of local govt. as we now see it, before we make any recommendations to the Commission. We feel that the different aspects of local govt. are too interrelated to come out with a single proposal and we don't know what we're going to end up with as a total package, so that I would say that it would be a minimum of six to eight months before we are ready.

Mrs. Hessler: We noted originally that the classification of counties falls into a different category. It's not dependent on the rest of the package, and it is something that is less controversial probably than anything else we will have to deal with, and that its immediacy is greater.

Mrs. Orfirer: Perhaps we will decide in the committee to go ahead with it.

Mr. Loewe: If your committee appears to have something in the offing we want to get in perspective what kind of a job we have in terms of working with you and discussing and perhaps resolving differences. If we still end up with two separate proposals, well then we'll make them at that time but at least we'll know precisely when and how the other group is operating.

Let me give you just a little background of our committee. The members are listed on the second page of the summary of the committee's meeting on Nov. 16 & 17. This committee has just recently been organized.

Let's just take a quick look at the proposal for constitutional change regarding Article X, Section 1. The only major change is that we are establishing classification of counties based solely upon population. These are merely initial proposals of those members who were present and discussed these items. It is by no means the complete

consensus of the committee. We're merely talking about using the population basis and the rest of the language is basically the same.

Mrs. Orfirer: One thing I noticed immediately is that you say "the General Assembly shall establish," where we say may which is a rather big difference.

Mr. Loewe: That's correct. There's some strong feeling on the other side to make it permissive. But those are the two basic differences. You have several bases for classification and we decided to stick with the one.

Mrs. Hessler: There's one other basic difference and that is that you provide in the Constitution for four classifications which we don't.

Mr. Loewe: And that is debatable too. There was not a clear committee consensus on any of these matters and after we work this thing through completely we may find four may be too many and maybe a minimum number would be a better way to do it.

Mrs. Orfirer: Although a county may be put into one classification by the G.A., it can change to another classification by a vote. Is that it?

Mr. Loewe: Yes.

Mrs. Orfirer: They can choose any other mandated forms of county government.

Mr. Loewe: Structure and powers go together. If you were a lower population group, and you wanted to move to the form that was used by the higher population group you would adopt the form and all the powers that went with it. The basic alternatives have to be the alternative forms, which we're going to get into next, and to provide more flexibility with regard to the alternative forms themselves, and that in itself might make it unnecessary for this clause to be in there because by the same way that they could move up to another classification, they could do it in the alternative forms. We feel that the alternative forms need improvement. We're giving attention to that.

Mrs. Hessler: If you're going into a classification you're not in, you do it by vote.

Mr. Kramer: Is the intent in this provision by implication or indirection to confer legislative powers on counties? Most of the counties do not have legislative powers. Is this an attempt to change the law on that subject?

Mr. Loewe: Yes, I feel that we should be attempting to give them legislative powers. Basically the implied power concept.

Mr. Kramer: Is this a proper way to go about it because it does seem to be going almost incidentally into the realm of legislative functions and powers. Counties are now regarded as administrative arms with some powers that look like legislative powers. If they're going to be given a general range of legislative powers, I think that a direct statement would probably be called for.

Mr. Loewe: You mean a so-called direction to the G.A. on the kinds of legislative powers? Basically, that is what we're intending to do, and whether it would have to be done by constitutional amendment or by the implementing legislation that the G.A.

would use to set up these classifications, I'm not sure.

Mr. Kramer: Well, it's a question of constitutional authority. If counties are to have legislative powers, it should be done by a direct statement in the Constitution rather than by indirection and delegation by the G.A.

Mrs. Hessler: We haven't gotten to the legislative powers question, as yet.

Mrs. Orfirer: If that were added to classification, it would change the whole system of local govt.

Mr. Loewe: Do you feel that just changing the structure by getting the public to approve classification would be meaningful?

Mrs. Hessler: It would be quite meaningful. It would give the G.A. the political opportunity to eliminate the elective officials, county officials, or some of them, and really create government--you have 9 or 11, or however you want to figure, governments at the county level and by setting up a different structure and be permitting the legislature to do it politically. Presently, you would eliminate 88 county engineers and coroners, if you're going to eliminate one. By classification, you could do it differently because the counties want something different. This is the reason why we thought that everything ought to be a package that hung together, because you can't give the county legislative powers without considering the clause which limits their powers when in conflict with municipalities which means you get into the whole problem of municipal home rule.

Mr. Kramer: This committee's provision for classification is not limited just to form. The reference is to organization and govt., and that has been construed already to deal both with form of govt. and with powers, so that under the Constitution there could be different powers as well as form of govt., for different classifications. The difference is that we would have the G.A. specify the powers for the different classes.

Mrs. Hessler: Suppose the G.A. decided that they would like to control all the counties around Lake Erie--or all of the counties that are bounded by the Ohio River which couldn't be so classified on a population basis. Under our proposal the G.A. could say "all counties with less than a certain income per capita" or "all counties of a density of population of a certain amount" for certain specific purposes to have certain specific powers. The different powers which could be given would have nothing to do with the form of govt.

Mr. Loewe: Do you see counties basically as an arm of state govt. or do you see them assuming a role that is more local or regional, in its aspects?

Mrs. Hessler: I don't think we have concluded it but I think that the general trend of our discussion has been that we are anxious to see counties with whatever powers that they have to have in order to take on what we've always considered municipal services in areas where the municipality doesn't have the boundaries to handle the problem. But this might also be true of regional governments. A county could be a region, but I would say that both municipalities and counties are arms of the state. State law controls what they are. They are creatures of the state.

Mr. Loewe: Counties are carrying out functions that the state has asked them to perform--the welfare function, the judicial function, the law function on a countywide basis.

You have concluded that the constitutional amendment is necessary to get classification accomplished? From the evidence that has been presented to us, it appears that a classification bill will have problems because of the uncertainty about constitutionality.

Mr. Kramer: There are cases where classification on the basis of population has been challenged for violation of Article II, section 28. One of the main cases is that which the G.A. attempted to provide that in counties of over a million in population, like Cuyahoga county, a different number of signatures on the petition for election of a probate judge than in counties with lesser population.

Mr. Loewe: That one, to my point of view, does not seem to have great weight when there have been other cases in which we have classified counties for salaries and other things.

Mr. Kramer: But there hasn't been any adjudication of those statutes.

Mr. Loewe: I think we're in pretty good agreement on that. We don't think we really have too many choices. We can discuss it on this basis--that some kind of amendment is necessary. Do you intend to deal in recommendations to the G.A. without regard to implementing such an amendment. We do have that job.

Mrs. Hessler: Is your classification proposal based on a mandatory classification by population?

Mr. Loewe: Let me just check the minutes here especially on that mandatory point. "In other discussions, it was suggested that a constitutional amendment to classify counties should provide that the G.A. may, rather than shall, provide classification. The committee wants to permit counties to adopt a system most appropriate to their needs without forcing all counties to adopt a single form and system of gov't., and at least implied powers should be provided to the class no. 3 and no. 4 counties, which are the highest population counties." So we have not resolved that completely. It could go either way.

Mrs. Orfirer: Can we get into some discussion about the various merits of having classification solely on population or on several criteria? I think Iola pointed out before some of the reasons why we chose a variety of criteria.

Mrs. Hessler: We've heard from a number of county commissioners including Seth Taft who made the point about Lake Erie, and I had met with a big group of county commissioners at their request and they felt very strongly that it should be permissive. They wanted the greatest possible flexibility, because they were recognizing how different the various counties were. This was also for the form, instead of setting up any forms in the Constitution. When you look at the difference, for example, in the operations and goals of Cuyahoga County and Hamilton County--these are two of the biggest three--and Franklin County is entirely different again. They have different degrees of density, they have different kinds of problems, and they have different experiences with forms of gov't. And so the whole trend of that group, we spent about three meetings, was that the greatest possible flexibility should be built in.

Mr. Loewe: Do you feel that executive control, especially the type of chief executive, to be the greatest differences between the big three? How would that be reflected in the kind of form that you're looking at? We have to be concerned with this kind of detail that will allow follow-up. What makes the kind of gov't. that you want--the form and

powers--so different from Cuyahoga and Hamilton? Now I would agree on the executive.

Mrs. Hessler: Cuyahoga County is almost completely incorporated. Franklin County isn't at all. Franklin County is a growth area.

Mr. Loewe: How do you see that affecting the kind of officers, a legislative body and the chief executive?

Mrs. Hessler: The kind of powers that might be given to Franklin County controlling future growth would be something that Cuyahoga County wasn't the least bit concerned with, because that isn't where the growth is. So if we're going to control growth in our part of the state we need a regional govt. to do it. Cuyahoga County cannot control future development within the county and so they would need different types of planning commissions, different types of controls on land use, and in this case the legislature which would have to give powers to control land use, the cities have the zoning power now, and if you're going to take that away and give it to a different form of govt. you have to use that level of govt. that can do the job, which would mean that the legislature needs the power based on other things than necessary population. It might be based in this particular case on the degree of incorporation, on the number of counties in a metropolitan region, a great many things.

Mrs. Orfirer: You wouldn't have to do it based on one criterion. You could use population plus another factor.

Mrs. Hessler: It might vary with metropolitan growth or on amount of incorporation or a lot of things that you might. Now we don't say that you ill. We're just saying that if you have a great deal of flexibility--ten years ago we would not have imagined giving either a county or regional govt. land use controls. Today, all over the United States this is being discussed and the federal govt. is making one step every year.

Mrs. Orfirer: Gene do you want to comment on some of the reasons that we noted in selecting multiple criteria for classification?

Mr. Kramer: The committee's proposal thus far is obviously toward the end of the spectrum allowing for a great deal of flexibility. You can take the three largest counties and say that the main thing that they have in common is population but there are many differences one being on a lake, one being on a river, and one being practically land-locked.

Mrs. Hessler: Or one being extremely poor with a high proportion of low income people like Appalachians.

Mr. Kramer: On the basis of population it's even more striking when you get away from the large counties and talk about counties in the southeast and northwest portions of the state. They have counties which are substantially similar in population but they are radically different in the southeast--mining counties, hilly, isolated, In the west part of the state, they are agricultural, prosperous, easily accessible. So that under a population classification the southeast and northwest counties would probably be put in a similar classification, yet they seem to have relatively little in common.

Mrs. Orfirer: I am thinking of Ed's problem--carrying it a step further--when you define into law, population is by far the easiest.

Mrs. Hessler: And the legislature would most likely choose that criterion. We don't have to make a decision--this legislature doesn't have to say we're going to classify all counties by poverty but when a problem comes up they can say without it's being unconstitutional all counties that front on Lake Erie shall provide such and such or may.... They don't have to say there shall be two classes of counties those that are on Lake Erie and those that aren't. It just gives them the power to say all counties of a certain nature can do this.

Mrs. Orfirer: Of necessity, through all this we have been very conscious of the fact that we are dealing only with a constitution. As we all know, it is going to live another 100 years and we just want to make a capability, as Iola has pointed out. You may hurt it by not having it there if they need it.

Mrs. Hessler: I think unquestionably the legislature would classify by population when they said what kind of govt. you could have. But there by having the permissive factor in the constitution it gives the legislature a chance to say every county over a certain population shall have or every county over a certain population may have.

Mr. Loewe: I guess the basic philosophy of our group is that we see a need for basic change in county govt. and implemented by the legislature to get the ball rolling. It may or may not come to the point where the powers really are what counties need. I think that we're dealing with the basic structure of giving them a mechanism by which they have a decent opportunity to contend with ordinary administrative problems of running a county govt. Then it would appear that the alternative forms should be handled in such a way that they give the kind of variety based on other types of classifications. Then I think the voters in a given community like Cuyahoga County would have to decide whether they want their county to have certain powers that other counties do not need. Eventually you are going to have to come back to the voters to give them an opportunity. You cannot make the legislature bite the bullet all the time.

Mrs. Hessler: You might let the legislature bite the bullet on some things and not on others. For example, the legislature probably won't have a lot of problems in eliminating the elected engineer and coroner in counties because probably no one would fight it. You couldn't get them to change the sheriff anyway and you couldn't get a constitutional amendment to change the sheriff.

Mr. Russo: You put it back into a narrow perspective again when you rely on the county alternative because in order to get it passed you have to keep it at a point where it appeals to a mass majority and so then you have another problem that you're going to keep it so simple the powers won't be sufficient to cope with the kind of problem you're going to have four or five years from now. So why bother going back to the electorate every two years to amend the county form of govt? The best thing to do is mandate as much of it as you possibly can and say here's the package, you either have to buy this package or you don't buy anything.

Mr. Loewe: You used the word "mandate". Did you really mean that?

Mr. Russo: One they mandate that kind of thing then the general public has a better choice and has to make a determination on that choice.

Mrs. Hessler: And the legislature can't do it politically unless they have classification. Ed, your concern is with the form of govt. in the county and whether it can do the job



in its relationships to other local govts. Isn't this then your chief concern how changes should be made to get better county govt? Simply because we think the county govt. should be changed and as a means of changing it we recommend that the constitution be amended to provide for classification, do you have to decide what kind of classification?

Mr. Loewe: It may be that we may just sit back depending on how quickly or how your group moves with regard to this. But we have a mandate to look at both the constitution and the statutory needs.

Mrs. Orfirer: I think Iola's point is that you are changed to look at it and what you might come up with is yes, the constitution should provide for the capability of classification. But I think her question is do you have to spell out all the particulars of the classification?

Mr. Loewe: Other people may have a much broader view of this, in which case I think a lot of them would say we would be derelict if we did not come up with specifics.

Mrs. Hessler: This is what concerns me because the Ohio Constitutional Revision Commission has 7 more years of life, and the reason it was given this long was to enable it to get into questions deeply, whereas you are charged with what is covering everything, including all the statutory changes in 2 years.

Mr. Loewe: It's just a question of what kind of work are we going to do now to think it through. I think your points are very well taken and I think that there is a good opportunity for us to communicate that to our committee.

Mrs. Orfirer: I would hope that what can happen as a result from today is that you will be able to express out point of view to your group. They may or may not buy it. They may have some more questions. If they do, then we'll be glad to come and discuss it with you. But it may not be necessary. Let's just see how it goes.

Mr. Loewe: There are other committees of our commission that you may want to relate to too.

Mr. Kramer: Apart from all of this discussion I think it's very important to keep the whole subject of the individual proposals for constitutional revision in perspective. I think we got a little bit off on our original plan in coming up with any specific language for a proposal for the classification of counties anyway. That was somewhat of a departure from the idea of examining everything first and then going back. But some members of the committee felt that this was of such importance that a tentative proposal should be drawn up and discussed and tentatively decided upon first. Our proposal is limited in its scope to not attempting to go in really to question any drastic changes in the present division of powers among the units of local govt., because the question of where the counties fit into the scheme is so much related to all of the other existing units and potential units that you can't make that kind of decision without examining everything in detail, and to put the subject of county govt. further in perspective you have to realize that as of now the counties are basically administrative arms of the state. Little by little more and more functions have been placed on the counties but most of these are to be carried out in incorporated areas or by agreements with municipalities so that county govt. presently does not have a strong function. It has many important functions to carry out but whether counties, without being drastically changed in their character, are going to have the kind of powers to deal with environmental problems

which we talked about last night is a question. So that if you want to change counties, make them strong units of govt., you've got to consider carefully their relationship with municipal corporations. And potential regional govts. and mere classification of counties isn't going to--counties have many problems dealing with the existing situation of trying to carry out their responsibilities now. One thing I think the committee and the Commission will want to consider would be, if regional govts. are found to be impractical, or cannot be achieved, or the decision is that the county is the appropriate level for carrying out functions on a regional level, that the county could become the important form of govt., something like the Illinois Constitution, which has been adopted and which, in order to achieve county home rule, must have an executive form of govt. There are many possibilities. At this point, this committee has considered a proposal to deal only with the existing powers of county govts. and if classification will make that easier, this is the way to do it but we haven't really tackled the question of where the whole county is going to fit into the system of local govt.

Mrs. Orfirer: I think added to that, Gene, is that the thinking behind this proposal was that it would not interfere with any future decisions that might be made. Regions may be 5, 10, or maybe 20 years away. If they come up in two years this is not going to interfere with it. If it comes up in 20 years, it will enable, as Gene pointed out, the counties to deal with their problems.

Mr. Shaw: We expect to have county recommendations from the committee in April.

Mrs. Hessler: You're going to come out with a package on county govt. independent of municipal?

Mr. Kramer: What sort of package is it going to be? Are you going to review all of the statutes dealing with counties and make recommendations with all of this needed change?

Mr. Shaw: Everything conceivable dealing with counties. This would mean taking care of all the statutory problems relating to counties, particularly the alternative forms revisions, the question of how much counties should have control over, special districts, recommendations on alternative forms of govt.

Mr. Loewe: I don't think we're going to get into finances, or even the judicial side of it very soon.

Mrs. Hessler: You certainly can't decide on land use and zoning controls by the county until you decide what land use and zoning control at the municipal and regional level will be

Mr. Shaw: Well we can make recommendations on what sorts of land use and zoning decisions ought to be under county auspices. We have already concluded that the regional govt. pre se won't be recommended.

Mrs. Hessler: The commission?

Mrs. Orfirer: It hasn't been decided to my knowledge. We have just talked about the districting the governor wanted.

Mr. Shaw: That's the timetable for the county committee. The regional committee had one immediate problem, which was state districting, subdistricts. It may not come out with anything at all.

Mrs. Orfirer: That's why I questioned your statement that you didn't think regions would be recommended at all. Do you mean that you don't think they'll be discussed at all?

Mr. Heminger: Just a question on how the commission is operating. The committees that you ave are going to issue individual reports which have to be dovetailed or the full commission is going to have to pull them together?

Mr. Loewe: Do you really mean that the county job will be done for the complete time of this commission's life by April? I think the initial intent was that we would go out of our way to come up with recommendations which perhaps could be made independent of others. Maybe they would be somewhat affected by future decisions.

Mr. Heminger: Maybe there will be some interim reports.

Mr. Loewe: That's correct. Maybe some of those interim reports might have to be changed because of later decisions but at least initially there will be some recommendations and some perhaps with a tag on it that will say "these are things that could be accomplished within 1973 and hopefully would not have to be redone because of future decisions." That's a risk you would take.

Mr. Kramer: Does "alternative forms" have high priority?

Mr. Loewe: The alternative forms and the classification are two high items on our agenda. Whether we get to the others I don't know.

Mr. Shaw: We'll be talking about county govt. around the state probably in February, concerning some of the alternatives the committee is grappling with now.

Mr. Loewe: Seminars, conferences and meetins will be held throughout the state, and we're getting some advice on that from a team from OSU, on how best to handle the communication of these alternatives with individuals throughout the state, public officials as well as citizens. We are not taking the form of a public hearing but using a different format and giving some real opportunity for people to react to specific proposals which we did not have in the public hearings. So they reacted very specifically or very generally about their own particular topic.

Mrs. Hessler: May I make one point that's extremely important which I don't see in your minutes? When you suggested keeping the sheriff but the appointment of a police chief for certain sized counties, please bear in mind the thing that the alternative forms did not do, that you have to spell out what the functions of the sheriff will then be, because if you keep a sheriff, and then you appoint a police chief--who does what? Same thing for the auditor and a finance director. This is one of the problems we had in grappling with the alternative forms. We simply do not know what those powers are.

Mr. Loewe: You are shooting for next November? The one point on this citizens attitude survey that hit home to me was this question whether county officials, other than commissioners, should be appointed, rather than elected, and 81 % disagreed with that. Throughout the state, all size counties, all size communities were involved in it. I think it's a good survey from what I've been able to see of the inputs into it. I haven't analyzed it completely except there was one question with regard to taxes which said "I am willing to pay more taxes for better services"--that was about 50-50, and there was another one which said "I want better county service but not at the cost of higher taxes." Sixty-three per cent agreed on that one.

Mr. Kramer: Were there any questions as to knowledge of forms and powers of county govt.?

Mr. Loewe: Yes. There were questions that asked people to identify their govt. in terms, first of all, where they lived, whether they were in a township or in a county, what the name of the municipality was, and they were trying to see who knew and who didn't and they would be able to get from those that did know and had a good familiarity with their govt. what their reactions were as opposed to just general answers.

Mrs. Orfirer: Ed, what we would hope that you would do would be to go back to your committee and just express the differences between the two sets of proposals, primarily the difference between "may" and "shall", the various criteria for establishing the classifications, and the legislative powers wording which is probably the most essential part of the discussion.

Mrs. Hessler: And mandating the form of county govt., either the form or the classification in the Constitution, rather than leaving it up to the legislature. Flexibility is important.

Mr. Loewe: We said four classifications and I don't know whether four will end up being it or not. We just chose four arbitrarily just for discussion purposes/

Mrs. Orfirer: When you decide to get into specifics there is no way to choose except arbitrarily. You've got to name a figure so you name it. So why not leave it to the G.A.? Once you start dealing in numbers you may end up changing the numbers but it's hard to get back to the concept of no numbers.

Mr. Shaw: One problem is the problem of special legislation. New Jersey had that problem. They used the classification "shoreline" and the legislature used that classification for counties that weren't even on the shore just because they wanted to pass a piece of special legislation for that county. So that's one reason we settled on a population.

Mr. Kramer: There's no question that any kind of classification opens the door to special legislation and population, area, whatever you use, is going to permit it, so you balance one with the need for flexibility that it can be abused by getting into special legislation on a large scale basis. And we did of course talk in our discussion about classification, about all the various means--there were many means of limiting this ability to classify, and our proposals are still tentative.

Mrs. Orfirer: I hope you will reopen this discussion of classification.

Mr. Loewe: We will. They will be on the agenda, at least those two items--classification and alternate forms.

Mr. Loewe and Mr. Shaw left.

Mrs. Orfirer: I don't think there's any point this morning in our having any discussion about regional govt., because we have gone over this to the full extent. Let us start with the new memorandum on possible county constitutional changes. The first is county govt. organization could be altered by writing the desired county structure

into the Constitution?

Mrs. Hessler: Can't we just eliminate that?

Mrs. Orfirer: Yes. If you all agree, I think we can dispense with that. (2) require the G.A. to provide a different structure for county govt.; for example, the Constitution might require that county legislative bodies be elected from districts or increased in number or that each county have an administration under a single elected official and then leave it to the G.A. to fill in the details. Offhand, it struck me that this is pretty well covered by what we wanted to do with classification.

Mrs. Hessler: I think it is awfully important, not only if you are going to get it passed but if there is a commitment on the part of the people to support a form of govt., if you give the people the option? In other words, you cannot say you have to change county govt. because we have discovered that this is ineffective, but give the people in a county the option within limits. We don't say what kind of municipal govt. you have to have in the Constitution, why should we for counties?

Mr. Kramer: It seems to be an awfully rigid provisions to be put into the Constitution.

Mrs. Eriksson: Giving additional powers to counties if they have a certain form of govt. is what happened in the Illinois Constitution. Giving additional powers to counties is dependent on a particular type of govt., and then it's up to the people to decide whether or not they wish to have this particular type of structure.

Mr. Kramer: And of course the device of making powers dependent upon structure is even quite a bit different from this option No. 2. It might add a lot of flexibility but if you want something different then you have to adopt a different form of govt.

Mrs. Orfirer: We'll get into that discussion here under "Powers." No. 3--"Prohibit a long county ballot. Since county elected officials are presently provided by statute in Ohio and not in the Constitution a short ballot cannot be achieved by eliminating those officials from the Constitution as is the cas in many states."

Mrs. Hessler: You could say which county officials should be elected just the way you specify which state officers shall be elected.

Mrs. Orfirer: What about providing a limited number rather than which ones.

Mr. Kramer: That creates problems if you are talking about both executive and legislative officials. That would be quite a limitation. If you're talking about having a legislative authority for one of the large counties, unless you say no more than X no. of elected executive officers, but no one has ever really described all the various county officials as executive officers.

Mrs. Hessler: They aren't, really.

Mr. Kramer: No. This introduces some new terminology and there are many difficulties. It would be much simpler at least if we did have a provision like other state constitutions naming the officers, then they could be eliminated from the Constitution. It's really a legislative problem.

Mrs. Hessler: A long county ballot takes accountability away from county govt., but a short county ballot wouldn't do anymore if the govt. didn't provide accountability in the way it was set up.

Mrs. Orfirer: We will move on. "Permit county commissioners to reorganize county govt. without affecting substantive powers, which reorganization would be final if no petitions or referenda were filed by voters in the county within a certain number of days." Possible variations permit county commissioners to place all independent boards and commissions under their jurisdiction, (but perhaps not independently elected county officials and not the courts) and permit county commissions to institute new budgetary and administrative procedures, limit the creation of autonomous county boards and agencies by the G.A.

Mrs. Eriksson: On these proposals, which are not all intended to be part of one, necessarily, you might want to invite some of the people who have been proposing this. This would include some of the urban county commissioners. Of course the basic question is whether you want to put it in the Constitution because it is something that could very well be done statutorily if the G.A. were so inclined. But I think that before you dispose of the question as to whether you want to put it into the Constitution it might not be a bad idea to have someone discuss its ramifications.

Mrs. Hessler: The legislature has the power now for all counties and classification would give it for some but not all counties. Would the people feel strongly enough about giving this much power to the county commissioners to put it in the Constitution?

Mrs. Eriksson: Some pretty good arguments for wanting to try this but you have to consider problems of whether you are then affecting existing laws--are you going to apply this to agencies which are separately created by the G.A. Are you going to permit county commissioners permission to reorganize only agencies over which they have control now? Some of these things are not clear.

Mrs. Hessler: They have so little control now because of the other elected officials.

Mrs. Eriksson: What would we do about them?

Mrs. Hessler: I've been doing a study on state reorganization, and some states have used the constitutional granting of authorization to the governor to restructure their govt. just like the President of the U.S. and it has run into a great deal of difficulty in nearly all the states. I think there are about 10 or 11 states where the governors have this power but as soon as they do some restructuring it is subject to veto by one or both houses of the legislature--the legislature says the governor shouldn't have this power, we don't care what the constitution says, we're not going to pass it that way. People might be reluctant about giving county commissioners the power to restructure county govt. when they don't even want to restructure it themselves.

Mrs. Orfirer: I agree.

Mr. Kramer: It may be that the idea of granting this power to county commissioners is so fraught with difficulties that you shouldn't pursue it, but dealing with the boards and commissions in some of the numerous county agencies and restructuring them is something that probably should be done. This would be an alternative to classification, rather than a classification proposal, or an addition to it.



Mrs. Eriksson: I'm not really sure that the people realize the number of autonomous boards and commissions.

Mrs. Hessler: I think there might be a better way on boards and commissions--just prohibit any functions carried out by any agency that isn't a general purpose govt., and require those presently existing to be brought under one govt.

Mrs. Orfirer: We have to lift this out and carry it to a broader context.

Mrs. Hessler: It seems to me that this boards and commissions thing should be attacked constitutionally as being non-accountable govt. I don't think that it is part of the commissioner's reorganization.

Mrs. Eriksson: There are a number of ideas that could enter in. Some of the state constitutional provisions which provide for executive reorganization include a provision which limits the creation of the number of new depts. That is part of the proposal of the state constitutions.

Mr. Kramer: Alaska is one.

Mrs. Eriksson: In addition to giving the governor power to reorganize, it also limits the establishment of more than 20 state depts., something like that. Or you can consider reorganization without such a limit.

Mrs. Hessler: Shouldn't we consider the possibility which really just occurred to me of the distinction between policy making and administrative officials? Has there ever been a constitution which said you can't elect administrative officials? They must be appointed, in order to provide for accountability.

Mr. Kramer: Not that I know of. The term "administrative" probably would need some definition. We have some fairly good ideas of what executive powers are and legislative powers but I think from a constitutional standpoint that we don't really have any good concept of what an administrative officer is, if you want to use such a term.

Mrs. Hessler: The mayor might be both policy making and administrative. I mean have both kinds of powers.

Mr. Kramer: But the problems of definition could be almost insuperable. Could inject more confusion and difficulties so that the end result would be worse than what you started with.

Mrs. Hessler: Did Seth Taft talk about the commissioners having the power?

Mrs. Eriksson: It was included as one of the recommendations from that urban county group.

Mr. Kramer: From the standpoint of relative important of county officers, the commissioners look upon themselves as being the major body of county govt., but it isn't necessarily so. County commissioners have only some of the functions of county govt. They have most of the responsibility through enacting the budget and raising the money, but not much responsibility for the actual carrying out of functions.

Mrs. Hessler: Our county commissioner only control 10% of the county employees. Down our way, all the county commissioners are asking for is that they be permitted to put a change on the ballot, a charter change on the ballot, instead of going through the charter commission thing.

Mrs. Orfirer: Well, can we hold this for the time being, and get back to it as we get into powers? 5. Permit pay raises for county officials during term. What's happening?

Mrs. Eriksson: Of course the effort is to get the bill through now is in order that the pay raises may take effect before the term begins. The constitutional provision applies not only to county officials. The county officials are among those that would like to see the constitutional provision changed, and if this committee recommends such a change then I think it ought to be a recommendation to whatever committee of the Commission ultimately considers all of those sections of the constitution that relate to public officials generally.

Mrs. Orfirer: Was this taken up by the legislative committee.

Mrs. Eriksson: There is a separate section which deals with general assembly, and the Commission proposals would continue to prohibit increases during term.

Mr. Kramer: From my experience from working on quite a few municipal charter commissions, and charter review commissions, this kind of provision is often copied from state constitutions and from other charters. It is almost standard in municipal charters that people seem to think that this is important not to benefit from a pay raise during term.

Mrs. Eriksson: One problem is that county commissioners are not all elected at the same time, that if they have a pay raise, some get it and some don't and that's what the county commissioners are complaining about.

Mrs. Orfirer: I think that we might be able to recommend something that says all people performing the same job at the same level receive the same pay.

Mr. Kramer: I just went through that with a municipal charter commission during this year and they wanted to have no pay raises during term, but because of staggered election for councilmen, this would mean that some councilmen would be getting paid more than others. They said, "well, that's too bad." It's more important that they not be permitted a pay raise during term. They know what they're running for. I think this is a fairly typical attitude.

Mrs. Orfirer: Of course the county commissioners are not determining their own pay so the same reasons do not apply as apply to the legislature. But it's a personal problem for a few people and I am not convinced of its importance to the state. Now to get to a good one. "Permit alteration in county boundaries without a vote of the people." Like the pay raise thing, we might as well be bound by the political considerations because it's not that vital.

Mrs. Hessler: It seems to me that we have seen an excellent example of the way that states are going to have to deal with changes in functions that require county boundary changes, what they are going to have to do is to set up a different govt. rather than change boundaries.

Mr. Kramer: One idea is to shift the burden; rather than providing as the Constitution does now that any change must be submitted to the people to provide that any change is subject to referendum in the affected counties, so the burden of challenging would be within the counties.

Mrs. Eriksson: That you could do is change it as is done with respect to municipal boundaries which means that the G.A. could establish a procedure by which, as under annexations, there would have to be some kind of hearing. Does it say whether it has to be a majority in each county?

Mr. Kramer: A majority of all the electors voting in the election on the issue. A very modest change, though, just reversing the burden. It could even be presented in language which would be attractive to the voters, in terms that any change in boundaries of counties shall be subject to referendum of all the electors in the affected counties which would be reversing the burden now but it would still retain the referendum and would permit the G.A. to make these changes of boundaries where necessary and make it subject to referendum.

Mrs. Hessler: In Virginia where they have judicial decision on whether an area shall be county or city there are all kinds of criteria for this and one of them is what will it leave behind and what will this do to the economic problems of the remaining county and that kind of thing. A judicial system rather than a vote would be a lot fairer in this case. This is one of the problems before the legislature now, is whether a municipality can withdraw from a township. Now the law says a municipality can withdraw from a township and there are some townships in which all of the wealth of the township has withdrawn and there is no way of conducting the township's business.

Mrs. Orfirer: I think we ought to work up some wording on that.

Mr. Kramer: As I said, it's a question of making it attractive to the voters.

Mrs. Hessler: I'd like to be convinced that anybody cases, that there was any reason for it.

Mrs. Orfirer: Well, it could be a stepping stone to some of the things that we might want, if we don't get it another way.

Mr. Kramer: It may be that people have not really considered this a device to achieve something that they have been talking about accomplishing in other ways. But it could be done.

Mrs. Orfirer: 7. Prohibit the G.A. from assigning duties to counties without providing funds.

Mrs. Eriksson: It's a very serious proposal.

Mrs. Orfirer: It sure is. We have heard it over and over again.

Mrs. Eriksson: It would be difficult to do effectively.

Mrs. Orfirer: You could say, without providing the means to obtain the funds.

Mrs. Eriksson: You could make a positive direction, just as the constitution says the G.A. shall support public schools. You could put something like that in here.

Mr. Kramer: Because that's where you get into the heart of the legislative process, determining what funds are available and who's to do what. Once you start trying to mandate too much of that in the Constitution that is getting into more problems than we have now.

Mrs. Hessler: If you said "shall provide the means of raising revenue" to support the service because now if the county commissioners could say to the people who elect them "We have been mandated to provide this function and it costs this much money and we have been told to raise it with a tax on licenses or a tax on banks, or whatever, and then they could do it without political repercussion, but the problem is now they've got to go to the people for a property tax or one of the few taxes counties are permitted to levy.

Mr. Kramer: If you're going to think about effectiveness, you have to think about judicial enforcement, as the ultimate and to say must provide the means is much too vague. The courts would not mandate the G.A. to provide counties with the ability to tax banks or whatever. The courts would never permit themselves to get into the position to mandate that. There are some things that can be mandated and some things that can't. It took a long time for the federal courts to get into the position where they said we can require reapportionment of legislatures and it is possible for a court to draw up the lines but when you get into something so complicated as providing the means of taxation, particularly if it were going to be some kind of new tax with all the rates, collection procedures and penalties, that is so much a legislative function that a court is not going about writing a statute.

Mrs. Hessler: The court would simply say "you have mandated a function that the county can't pay for, so the county doesn't have to do it.

Mrs. Orfirer: But would it give the county the right to refuse to do something? When the court said you are not doing it then the county could point to the Constitution and say the G.A. has not provided the means for it. Therefore we are off the hook.

Mrs. Eriksson: That's right, It undoubtedly has value but not the absolute value of the word "shall".

Mr. Heminger: I think it's worth trying to draft something.

Mrs. Orfirer: Shall we attempt to do some wording which will provide that the G.A. should provide the county with a means of raising revenue for taxes that it assigns to counties?

Mr. Kramer: I don't disapprove. I look upon it with some caution and realism.

Mrs. Orfirer: I think we have to understand that it isn't going to work miracles but that it might be a help to the counties.

Mr. Kramer: That isn't the heart of the legislative process of establishing duties and providing means of carrying them out. When you elect people to make these decisions and it is very hard to put too many restrictions on their ability to make these decisions, or to avoid making the decisions.

Mrs. Orfirer: Well, let's see what we can work out with it. Give it some positive thinking. "Require the state to pay all the costs of operating the courts."

Mr. Kramer: In a previous hearing, Bill Keen made a point of this and I think it is something to consider very seriously because the courts really are not part of the county govt. in any sense. The county simply provides physical facilities for them.

Mrs. Eriksson: The county must provide space, etc. and yet the county has no control over the court budget. And if you talk about the state taking it over, it's a very large amount.

Mr. Kramer: Actually, the state-wide court system which is probably a subject all its own, would deal with this.

Mrs. Orfirer: Do you think we just ought to turn this over to the judiciary committee?

Mrs. Eriksson: If this committee thinks it's a good idea, why not recommend it to the committee studying the judiciary?

Mrs. Brownell: Aren't there other committees created by the legislature studying the unified court?

Mrs. Eriksson: Yes,

Mr. Kramer: If the state is going to take over all of the funding then you get into the question of whether there has to be a common pleas court in each county. The whole restructuring of courts gets much beyond the scope of this committee.

Mrs. Orfirer: Then I think we should just recommend that we feel that some kind of reorganization along these lines should be attempted. I think this is the logical place to stop at the end of the structure aspect of this.

The committee adjourned until January 15, at 6 p.m. at the Hollenden House in Cleveland.

Ohio Constitutional Revision Commission  
Local Government Committee  
February 6, 1973

### Summary

Present at the Committee meeting on February 6 were Chairman Orfirer, Mrs. Hessler, Messrs. Ostrum, Heminger, and Russo, and staff members Kramer and Eriksson. Mrs. Orfirer began the meeting with a discussion of the possibility and advisability of making some recommendations to the full Commission in the near future.

Mrs. Orfirer: We have before us a complete package on Article X, except the section on county charter commissions, which we could take up at the next meeting.

Mr. Heminger: One would be the classification of counties, one is the county charters, one is county powers, and the fourth is county boundaries. And the regional part could be part of the package or separate.

Mrs. Orfirer: Yes, we could submit it at the same time and the commission could act on it separately or with the material on counties.

Mr. Russo: The most controversial would be the regional one, wouldn't it?

Mr. Kramer: These can be presented as a package or separately. They would be presented as separate amendments.

Mr. Russo: Yes, but if one in the three or four is distasteful, the public is confused. I don't want to take the chance of blowing the whole deal. I'm just wondering whether we should divide the package up into two parts for ballot purposes. I think everybody recognizes that county charters and home rule are necessary, but I do believe that "regions" will be objected to because it is another layer of government.

Orfirer: And taxation.

Mr. Russo: And our real goal is a regional government, but that won't happen right away, and we still want all the county reforms. Perhaps that should determine the priorities for the time being.

Mrs. Orfirer: Are you suggesting that we not only try to get them on the ballot at separate times, but also submit them to the commission at separate times?

Mr. Russo: I'd like to present them to the Commission at the same time, get the ones that we feel are absolutely necessary and pick up plenty of support for.

Mrs. Orfirer: So we should recommend them to the Commission with the stipulation that we prefer that they be submitted to the General Assembly at separate times.

Mr. Russo: That's correct. Next November and a year from May.



Mrs. Orfirer: The governor's regional concept will be in the public attention more later on. It might even be a good idea to wait a year.

Mr. Kramer: It might be better to wait because some regional experience will accumulate in the next year, anyway.

Mrs. Orfirer: I think we might even seriously consider not presenting the regional amendment to the commission at this time.

Mr. Heminger: I agree with you. I think you should hold it for later refinement.

Mr. Ostrum also agreed.

Mrs. Orfirer: I think we are quite a way away from getting such an amendment adopted. It may be very much to our benefit to let the governor's proposal take place before we propose a regional form of government, and get people used to it, and see ourselves how it works. Then we will work toward a submission of these four county amendments to the full commission either at the March or the April Commission meeting, plus one which Gene tells me will be rather simple, on charter commissions which would be the remaining section in the article, dealing with county government. That will give us a complete package on nothing but county government. County powers, county charters, county classification, and county boundaries.

Mr. Kramer: County boundaries, now section 30 of Article II, would become Article X, section 6. In the outline provided to everybody at the meeting before last on the county question, the last section deals with the procedure for adopting a new county charter. Most of the problems noted in those questions would be covered by the fifth draft you do not have yet.

Mrs. Orfirer: If you will turn to Art. X, Sec. 1, on classification, there are some variations from our earlier amendment. Basically, as we had it before, this would be permissive and not mandate the general assembly to classify counties. Secondly, the criterion for establishing classification: The basis for classification would be population or any other reasonable basis related to the purpose of the classification. We used the simpler language of the model constitution. Earlier, we had given a number of criteria as explanatory to the legislature, but that can certainly be done without putting it into the Constitution. The third main point is that no classification can consist of more than four classes. Originally, we had no limit on the possible number of classifications. As Gene pointed out in the comments, "four" is arbitrary. The local government services commission committee on county govt. provides in their proposed constitutional amendment for an absolute four and they divide them by population limits in the constitution, which I'm sure we don't want to do.

Mr. Russo: This may present a problem. In the legislature, we had two specific acts for Lucas County and this brought a terrible fight out on the house floor about adopting special legislation for counties. But some counties do have special problems.

Mrs. Orfirer: Is it your feeling that we should permit this or not permit it?

Mr. Kramer: Some legislation such as the bill in the last session providing for a county

to hire a coordinator to oversee construction, is applicable to all counties, although really only intended for one.

Mrs. Orfirer: I would assume that what would happen is that a certain classification would be given powers on a permissive basis. They wouldn't have to use them. And this would forestall the argument here, at least somewhat, on special legislation--legislation which only applied to one county.

Mr. Kramer: The powers section we'll take up later also is related to this kind of problem, where a county has a particular problem. It would provide that, in the absence of any prohibition or legislation telling you how to do it or that you couldn't do it, the county would be free to act. Classification is not the only tool for solving individual problems.

Mrs. Orfirer: You took us right into the fourth point, here, Tony, which is fine--our next limitation is that each classification would have to contain more than one county, I really think that this is going to be necessary in order to bypass some of the tremendous objections that come to special legislation.

Mr. Ostrum: For clarification, can Gene just give us an example of how the legislature would use the permissive power to classify?

Mr. Kramer: The one that has been most talked about is to provide different forms of govt. depending on the size of the county in terms of population.

Mr. Ostrum: Each of those two, three, or four population classifications would have to include at least two counties. We should have examples when we present this to the Commission and have a public hearing.

Mr. Russo: We have a constitutional issue here where you are going to tell two counties they can do A and you are going to tell 86 counties they can't do A because they don't fit into the population qualifications. What if those 86 counties want to do A?

Mr. Kramer: Well, just as now, 88 counties may want to do something, but they have to have permission to do it. One solution, of course, is a county charter.

Mr. Russo: But isn't it the constitutional right of any individual to do what you're doing in Pike County in Cuyahoga county?

Mr. Kramer: There is no prohibition in the law against reasonable classification, and that is what we are providing in this section. "Equal protection" still permits reasonable classifications. If there is no reasonable connection between the basis of classification that you use, no reasonable relation whatever to the difference in powers, it would be arbitrary and unreasonable and it would be struck down.

Mr. Russo: Let's say that there ~~are~~ mass transit funds available, and they are made available to one class of counties but not another. Doesn't everyone have a right to these funds?

Mrs. Hessler: Why would the legislature pass such a classification? If it's reasonably related to a need in some counties which doesn't exist in others, I don't see any objection.

Mr. Kramer: The classification we are talking about must be related to structure and powers because it is related to the language: "The general assembly shall provide by law for the organization and government of counties".

Mrs. Orfirer: Depending on the purpose of the classification, if a county wants something and can state its needs to the legislature, there is no reason why it can't be included in the classification. Because the classifications were designed to provide those counties who need it with that purpose.

Mr. Kramer: Any movement away from the rigid requirement that the constitution includes now for general law having uniform application is of some value.

Mr. Russo: We're talking about the county not being limited by law. A county which does not fall in a certain classification can insist that they have the right to that classification.

Mr. Kramer: You're referring now to the powers section. No, because all of the counties would still be subject to the general assembly, and if the general assembly had not acted or prohibited, the counties would be free to act in the way they see fit with respect to local problems or county affairs.

Mrs. Hessler: For example, the legislature has the power to give townships certain powers, or villages certain powers, and cities, certain powers. Now we're going on population. Or charter cities certain powers and non-charter cities, certain powers. And that based on something else. The legislature is responsible for local govt., and if they decide that on the basis of population, or having adopted a charter, or something else, powers should be different, they can do it. If we change the charter provisions to make it much easier to adopt a charter, then any county that didn't like the kind of govt. that the state had given it can change it by adopting an alternative form or a charter.

Mr. Kramer: It would give counties much the same relation to the state and the g.a. that non-charter municipalities have now. If they had not acted or prohibited, the county would be free to act in that area. The hiring of a county coordinator to oversee the construction of a justice center would be a good example where a county would be permitted to act in the absence of a prohibition to act. It would be a matter of local self-government. It would not have been necessary to go to the general assembly to get what was generally regarded as a special law for Cuyahoga county.

Mrs. Orfirer: I think we should bear in mind that this is permissive. The General Assembly may classify, for certain purposes and not for others--there is nothing here that says it must classify for any purpose, or in any way--so I think that we just have to assume that they will use this for the best of all the counties. The counties that have a legitimate need will make themselves heard in the legislature.

Mr. Kramer: In fact what it is doing is removing, partially and within limited bounds, what now is a restriction on what otherwise would be the clear power of the general assembly to classify counties, or it could even by special law act for all the counties. But because of the prohibition against special legislation, something like this is necessary to remove that restriction. Of course, removing this prohibition could open

the possibility of abuse. Any power can be--there is abuse now.

Mrs. Orfirer: This is why we're hearing so many outcries for classification of counties now. Universal application is causing a great many abuses.

Mr. Kramer: Nearly everything involves some sort of trade-off. You trade off the present prohibition against special law, for the benefit that will be achieved by permitting some limited classification.

Mrs. Hessler: You also protect the smaller counties against the demands of the larger counties for change in their governments.

Mr. Heminger: Shall we retain the maximum of 4 classifications.

Mrs. Hessler: I think four would be a maximum, three would be equally good.

Mrs. Orfirer: I don't think it hurts any to have four rather than three. It may provide a little bit more flexibility.

Mrs. Hessler: In most of the other states with classification, they have never really used more than two classifications.

There was general agreement on the language as presented.

Mrs. Orfirer: Article X, Section 5, the implied powers. You have two versions--the primary difference between the two is that version B is self-executing and version A is not. If you will turn to version A the key words are in the first line: counties may, as authorized--which makes it not self-executing because it must be done by the general assembly. Also, note the words at the end of the section in brackets which read, "provided, that no tax shall be levied by any county except as authorized by general law."

Mrs. Hessler: Wouldn't the legislature have control of taxation without this?

Mr. Kramer: Yes, but this would be a new provision making a direct grant of powers. It may not be necessary because it's covered by the limitation--but it is just to make it clear, This would be one of the first things that would be looked at. Municipalities, as we discussed before, have home rule taxing powers, but the g.a. can limit and regulate that power.

Mrs. Orfirer: This turns it around and says in order for counties to tax, it must be authorized. Maybe I'd better back up for a little bit, and review in all of our minds what this really provides. Basically what it means is that every county would then have the same powers as municipalities now have. A county would not have to go to the g.a. for permission in those matters which the state has not expressed itself. The example that Gene was using about when Cuyahoga county wanted to have a coordinator} there was not a direct grant of power by the state for counties to do this. Therefore, the county had to go to the legislature for permission, a bill specifically passed granting them this right. If this amendment had been in force, this type of power to hire a coordinator for a purely governmental powers, would have automatically accrued to the counties. The only difference between A and B is that one happens automatically and the other does not.

Mr. Ostrum: The home rule that the cities now have--the county couldn't do anything to get in the way of the home rule power of cities?

Mrs. Orfirer: That is correct. Counties could not interfere with powers municipal corporations are exercising.

Mrs. Hessler: If we were later to modify the home rule powers of the municipalities, this would not affect this, because it would not be in conflict with constitutional powers.

Mr. Kramer: Right. Some of the most difficult problems for anybody working with a limited form of government, a county form of govt., a school district, or non-municipal district, is this matter of looking for implied powers. The counties and school districts face this to a large extent, and quite often. They aren't able to deal with their local problems. They have to find an implied power and if not they have to go to the g.a. to get a law enacted. A large amount of time in the atty. gen.'s office is spent trying to determine whether counties have particular powers under the statutes--and there is constantly a need for ruling by the atty. gen. on that subject. Under this proposal, where the g.a. has a statute on the matter it would have to be followed, but where general law is not involved the counties could go ahead and act in a reasonable manner to deal with local problems.

Mrs. Hessler: I prefer version B because I think it makes it clear that the legislature can get into the act by limiting counties, but you don't have to get a positive action from the legislature for counties to have the ability to do what they feel is necessary.

Mr. Kramer: It's intended to be similar to something that we know about--the powers of the municipalities.

Mr. Ostrum: I would prefer B rather than A, but I would want that tax provision in brackets included.

Mrs. Orfirer: As I understood it, version A would be very useful in combination with classification. Version B is self-executing and the G.A. could not use it to make distinctions.

Mr. Kramer: "B" could also be used in connection with classification.

Mrs. Orfirer: Fine. Then I agree with everyone else, and I prefer version B too.

Mr. Kramer: With respect to that last proviso, the source of that is HB 435, which is the bill the counties pushed for last session. This would provide counties with this kind of power in a constitutional amendment. One of the major considerations in the drafting of that bill was the express provision that this power does not include the power to tax without express authorization from the g.a.

Mr. Ostrum: I think it is an important power that the g.a. ought to retain.

Mrs. Hessler: I move that we adopt for Art. X, Sec. 5--Version B, including the material in the brackets with the brackets removed.

The motion was unanimously agreed to. The classification provision was also unanimously agreed to.

Mrs. Orfirer: The third one is Article X, Section 3 on county charters. Two suggested versions are here. In both cases, a single majority vote in the county would be sufficient--it would remove the multiple majorities for the adoption of county charters.

Mr. Ostrum: The thought has been expressed previously that/one man-one vote rule may make the multiple majorities illegal.

Mr. Kramer: There is no case right on point that raises this question. It is clear, though, while the original cases all involved a portion of the state legislature, that the same principle has been extended to city councils, to any representative body of a general unit of local govt. In one of the original decisions, involving the Georgia county unit system, the court said that the voters in the larger counties have less weight than the voters in the smaller counties because the county vote went as a unit, so that the vote in the smaller counties outweighed the vote in the larger counties. There is a quote here from that opinion: "Every voter is equal to every other voter in the state when he casts his ballot." This underlines many of our decisions.

Mr. Ostrum: What you are saying is that it is a logical extension of the one man-one vote principle, we must be careful to document this in our comments.

Mrs. Orfirer: We can state that we don't think it ought to exist whether it's constitutional or not. The difference between version A and Version B is whether the language permitting the county to assume all municipal corporation and township powers should stay in or be deleted. Version A is the stronger of the two versions, permitting the assumption of more powers by the county under a charter.

Mr. Russo: You might as well go for what you think is best, because those local govts. that are going to be fighting it are going to be fighting it whether it is a weak version or a strong version.

Mrs. Hessler: I think the whole home rule concept is being weakened by so many things, including federal policies, the increasing administrative responsibilities of COG's, and regional councils. I think that it is going to be easier a year from now to tackle this problem.

Mrs. Orfirer: Whatever we do today is not going to be acted upon for a year anyway, by the public. But I agree with you and I think this is an argument in favor of a strong version. Things are changing in regard to a regional concept. Even if county powers are strengthened, I think in many cases the county will be bypassed by a larger region.

Mrs. Hessler: But on the other hand if you give the counties the implementation of the priorities set by a regional planning council or by the council of govts., it gives the counties a chance to strengthen themselves. So in effect it is giving a metropolitan area enough power to control its future.

Mr. Ostrum: At our public hearings, we had regional govt. up for people to address themselves to--and looking over some of my materials, I was noticing that the Ohio Municipal League (Mr. Gotherman) addressed himself quite extensively in the memorandum he presented to regional govt. and made some constructive suggestions there. Are we moving too rapidly towards some changes in Article X, county govt? Do we need public



hearings?

Mrs. Orfirer: We had hearings on the regional govt. idea because regional govt. was such a radical proposal that we didn't want to go into all the specific drafting and thinking and presenting it to the Commission until we got a feeling on it. We got a pretty strong feedback on it. But the county proposals are not nearly so radical. This is something that people all over the state have been asking for. In the course of our public hearings, and our other meetings with other people, we received a lot of comment on strengthening county govt. The Commission will have hearings--they must. And we will have the results of a questionnaire we have sent to county commissioners through their association.

Mr. Heminger: I think we've had our ears open when people have come to discuss this with us. And we have talked with some experts.

Mrs. Hessler: When the commission has the public hearing, we should invite the people that have been concerned for a long time with county problems.

Mr. Heminger: It certainly seems to me that the regional concept was criticized as creating another layer of govt. Strengthening county government may solve that problem.

Mrs. Orfirer: Are there any further comments on the two versions?

Mr. Ostrum: Would it be wise for us to tender both of them to the Commission with pros and cons for each of them?

Mrs. Orfirer: My feeling is that we have an obligation to present our recommendations--that if the commission does not care to accept it, then we come back at the next meeting of the commission with the other version. They may send it back to committee and say we would like you to reconsider it--and then we can decide if we want to resubmit the stronger version or submit the other.

Mr. Ostrum: I think, when we take a recommendation to the commission, we should have the vote of the other members of the committee.

Mrs. Orfirer: I think we will have them. I will find out. I think what we can do is go with a majority vote today, and give them the opportunity to express their opinions on it.

Mr. Kramer: I think we ought to be very clear as to what these two versions do and don't do. Version A is not adding any powers--it is something that is already in the constitution to provide for a strong form of county charter--so approval of this version by the voters would eliminate the multiple majority requirement, which might be invalid anyway. Version B would remove from the constitution the possibility of ever adopting the strong form of county charter. It might in that way be regarded as a pure victory by those who would have opposed a stronger county. The main argument in favor of version B would be removing the possibility of a strong county charter in the hopes that you might be able to sway the voters to adopt the limited form of county charter, providing for a change in the structure and powers of the county, but not including all the possibilities present today.

Mrs. Orfirer: I think that is a good point, Gene, that by accepting the weaker version we are radically changing the constitution as it now exists--by changing the possibility

of adopting a strong county charter, If we adopt the stronger version, we are only changing the multiple majority. It is not changing the possibility of rights under a county charter.

Mr. Kramer: If there is anything radical in it, it was done in 1934, when it was first adopted. Even the defeat of the amendment would leave the section intact as it is now--and it would still be possible to have a strong charter. It would just keep the multiple majority. All we're doing is eliminating the multiple majority.

Mrs. Hessler and Mrs. Orfirer agreed to version A.

Mr. Ostrum: I saw in B the provision where there is conflict, the municipalities prevail in exercising the power. And in A, presumably, the conflict is resolved in whatever way the charter says. So isn't that a change?

Mr. Kramer: The section presently provides for two different kinds of charters. That provision as to the municipal and township powers prevailing refers only to one kind of charter. I think it is very important for everybody to understand, too, of all the county charters that have been proposed, only one of them was deliberately drafted to require the multiple majorities. And in most of the others, an attempt was made to avoid the multiple majorities requirement. So it's more a psychological barrier. If that is the only thing preventing a county from adopting a county charter, going to version B, then you really wouldn't have learned much from past experience.

Mrs. Hessler: There's nothing here on section 4.

Mrs. Orfirer: Section 4 will be considered at the next meeting. Then we will have the package of five amendments which deal with counties. O.K. One more. The next amendment under consideration is Article X, Sec. 6, which deals with the boundaries of counties. Let's go back two minutes to Art. X, Sec 3 and vote. We have unanimously agreed that there is not much choice between the two versions, that we are not going to take away a right which is presently in the constitution, so we have agreed to version A.

All agreed.

Mrs. Orfirer: We are now going to Sec. 6 which deals with the boundaries of counties, which is now Sec. 30 of Art. II. There are two main points. One is in the third line, on reducing the number of counties. The second thing that it provides for is a reversal from the necessity of putting it on the ballot for a vote of the people to change county lines to putting the responsibility on the people to petition. We spell out the manner of the petition, and we have used the same procedure as that provided for in Art. II, Sections 1b to 1g. Except that I think we took out some of the detail.

Mr. Kramer: As you see in the comment, the same points can be raised here as with respect to multiple majorities. The one man one vote rule might be construed to prohibit the present constitutional provision which requires majorities in each county.

Mr. Ostrum: The legislature would do this by law?

Mr. Kramer: Yes, to take action doing anything that is listed here--it must be by law--and the law is subject to referendum by the people or petition.

Mr. Kramer: The General Assembly doesn't have the power to reduce the number of counties now.

Mrs. Hessler: The question is, would approval have to be by majority vote?

Mr. Kramer: Once you define the area affected, it's a case of everyone in the area having voting rights. This section is a limit on the powers of the g.a. The g.a. would still have plenary powers to do with county boundaries as it saw fit. Presently, there may be a limitation with respect to reducing the number of counties. It may be by implication that the g.a. would not have that power, because other powers are enumerated.

Mrs. Orfirer: Isn't that the way the constitution works--the g.a. doesn't have a power unless it is explicitly stated?

Mr. Kramer: No, but if you list something that can be done, the implication is that something not included can't be done.

Mrs. Orfirer: What we are doing here is putting this in line with other provisions which would be subject to the same referendum.

Mr. Heminger: Is there any significance to the 6% figure?

Mr. Kramer: That is the same percentage required with respect to other referenda. This provision would of course not be self-executing in any respect. It would be eliminating a restriction on the g.a., restricting a power which it would otherwise have to deal with counties. The arguments with respect to changing county boundaries, etc., would be directed to the g.a. which would make it possible for the g.a. to do something about it.

Mrs. Hessler: Are you proposing that this be taken out of Art. II and put into Art. X?

Mr. Kramer: Yes.

Mrs. Hessler: Now do you have to say by a majority vote or is that implied--it's better to leave it out if you can.

Mr. Kramer: Unless you say otherwise, majority vote is always required.

Mrs. Orfirer: You mean where you say be submitted to the electorate of such counties.

Mr. Kramer: It is the same in all of the other provisions for submission of a question.

Mr. Heminger: How do you determine the number of electors in a county that doesn't have registration.

Mr. Kramer: By vote cast in the previous gubernatorial election--that is the definition of "electors".

Mrs. Orfirer: We are basing these amendments on this one man-one vote concept--we have talked about it on two of the four. I think we should have a very well thought out

statement prepared to submit to the commission--when we submit these to the commission--relating to this concept. Perhaps there have been actions taken in other states based upon this.

We have been proceeding on the assumption that the content is what we wished, and I will continue that assumption unless I hear otherwise. If somebody would like to make a motion, that would be in order.

The proposal was agreed to.

Mrs. Orfirer: Subject to your approval, we will submit our recommendations at the March meeting of the commission for presentation and discussion. April would be a full Commission hearing, for the public. May would be a vote of the Commission. The idea is that they would not be submitted to the legislature until they reconvened the following January. Does this sound like a reasonable time table to you? In view of that, the meeting of the commission is going to be on the 19th and I suggest that we invite Mr. Maslar from the County Commissioners Assn. to meet with the committee the day of the Commission meeting.

Mrs. Hessler: Also the chairman of that Urban Counties Group within that organization who, I think, is Mr. Cloud, a Montgomery County Commissioner.

Mrs. Orfirer: And perhaps Hugh Corrigan, the Chairman of the CCAO.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
February 19, 1973 Morning  
Local Government Committee

### Summary

The Local Government Committee met at the commission offices on February 19, 1973, at 10:30 a.m. Present were Chairman Orfirer, Committee members Mr. Ostrum, Mr. Russo, and Senator Gillmor. Speaking to the Committee were Mr. Kellermeyer of the County Commissioners Assn. and Mr. Tom Cloud, County Commissioner of Montgomery County. Mr. Kramer, staff consultant, was also present.

Mrs. Orfirer stated that the County Commissioner's Assn. had sent<sup>a</sup> questionnaire to county commissioners at her request relating to the classification of counties. It was mailed recently and 18 of 88 counties have responded so far. The questions asked on the questionnaire were: Do you favor classification of counties?, Should classification be permitted based on mother or more than the single criterion of population?, Should a county be permitted to be in different classifications for different purposes?, Should the constitution specify a minimum or a maximum number of divisions or classes within a single classification?, and Should the constitution specify a minimum or maximum number of counties within a division?

Mr. Kellermeyer: On #1, we have 11 yes and 5 no. Do you want me to go through these? We have not yet had time to tabulate them.

Mrs. Orfirer: Did you get any other comment on the questionnaires--did anyone call you or write anything separate?

Mr. Kellermeyer: No.

It was agreed that the number returned so far was not large enough for a detailed discussion of the results. Mr. Kellermeyer agreed to tabulate the results and send them to the CRC, including identification of the county either by name or size.

Mr. Kramer: Has this been a subject of active discussion among county officials generally?

Mr. Kellermeyer: Not too much, no sir.

Mrs. Orfirer: Would you want to take the opportunity, while we're looking at this question to discuss no. 3, Gene?

There was discussion about the meaning of questions 4 and 5, and Mrs. Orfirer noted that, in question 5, the word "division" was intended to include "class".

Mrs. Orfirer: In your meetings of the county commissioners or in the workshops you've had, has this been discussed?

Mr. Kellermeyer: Very intensively.

Mr. Cloud: I wish I had the minutes of our meeting from December 1971 with me, because there were a number of resolutions passed by the county commissioners assn. in this area. I can't remember if classification of counties was in the group or not.

Mrs. Orfirer: Mr. Cloud, would you share with us your thoughts on the county matters we have been discussing?

Mr. Cloud: I appreciate the opportunity to be here. I think I'm here as the Chairman of the Urban Counties Committee of the County Commissioners Assn., and as a Montgomery County Commissioner. I'm in my fifth year as a commissioner in Montgomery county which is Ohio's fourth largest by population. We have the same problems that most urban counties have--we have 18 cities and villages, 13 townships, 16 school districts, plus county government--48 political subdivisions within one county. Plus five regional agencies, and four special service districts, which is a total of 57 political subdivisions or political agencies operating within Montgomery County. I'm in my third year on the executive committee of the County Comm. Assn., and in 1971, I founded something known as the Ohio League of Urban Counties, which has now been melted into the County Comm. Assn. as the Urban Counties Committee. In addition to that I am on the Board of Directors of the Natl. Assn. of Regional Councils, so I also get involved in regions. I suppose during the first four years I spent as county commissioner, I was impressed with some of the stuff that we were able to do, but the main thing was that we were doing it in spite of rather than because of the structure of the govt. we were operating. It is a three-man board operating about a hundred million dollar a year business. And we're operating this hundred million dollar a year business with no identifiable chief executive, and no identifiable governing body. A board of county commissioners is by statute given the responsibility of coordinating the activities of county govt. but not given the authority to do it. The problems that we have are 1973 style, but our structure and our tools are 1851 style. We've got a lot of enabling legislation on specific subjects in the last 120 years, but essentially our structure is the same. Montgomery County has tried to change its form of county govt. on five separate occasions. There have been three attempts at a county charter. In 1964, we actually had the first question on the ballot. In 1962 we had a petition attempt to secure enough signatures to place it on the ballot, but fell short. We have the alternate form of county govt. on the ballot twice, once under the old form in 1965, and once under the new form in 1971. We've had about every reason imaginable given as to why our attempts at reforming county govt. have failed. They've failed due to vested interests of office holders; we've had opposition from political parties; we've had opposition from political subdivisions, sometimes townships and municipalities. I will discuss 4 subjects with you: first, implied powers; second, classification of counties; third, county charters; and last, county boundaries.

On all of these, with the exception of county boundaries, and I am speaking as a member of the Mtg. Cty. board of county commissioners and also for the urban counties--because we have taken positions on the first three of these subjects.

Implied powers--it's our position and it's a very strong position that implied powers or home rule or residual powers--that this is a tool that urban counties desperately need. The power to do those things specifically allowed by statute, and, if the statutes are silent, counties should be able to act. In Monty. County, we just moved into a new \$9 million county office bldg. We felt that we couldn't build this facility without



having parking space so we built a parking garage under the plaza of our county administration bldg. We got the bonds drawn up and the necessary legislation, but discovered that there was no statutory authority for us to finance the garage with revenue bonds--we were going to pay off the revenue bonds by charging fees within the garage. When Peck, Shaffer & Williams was drawing up the bond legislation, they discovered that there was no statutory authority for counties to charge fees in parking garages, so prior to the time when we could get rolling on the parking garage, we had to get legislation drafted and get it through the House and then through the Senate, and signed by the Governor before we would charge fees in the parking garage. Even though this was emergency legislation, it still cost us someplace between 50 and 75 thousand dollars in delays, because of the fact that we lacked the statutory authority. The statute didn't say we couldn't do it, it just didn't say that we could.

Montgomery County government has become involved in many many responsibilities, drug programs--environment--we've got one of the most active environmental health programs of any county in the U.S. On all of these, it seems that everytime we get into a program like this, we have to find some way of circumventing state law. There's an obscure statute someplace that allows counties to participate in any program where there is federal money involved--and we have gone through some real gymnastics to get one federal dollar involved in a program so that we can spend county dollars in that program. Programs which are obviously the responsibility of the local govt. in the 1970's--things that we should be involved in. People are constantly questioning our authority to act on certain things.

Dayton and Montgomery County's biggest problem area right now is our area's economy. Dayton is really coming back and it is coming back fast. The economic picture is the greatest it has been for a long time--and we want to keep going on it, and we feel county govt. should be involved in it. We're the only local govt. in our area that has money, so we should be involved. We've created within the county general fund this year a \$300 thousand economic development fund--we're going to spend \$ $\frac{1}{4}$  million advertising over the Eastern seaboard to the Mississippi river--but we're being questioned now on our right to spend this money, because the statutes are rather fuzzy on it. The state legislature hasn't become involved in this, other than in community improvement legislation. We've got a fund set aside for the support of the arts--and now we're being questioned as to our authority to spend it. If we had the alternate form of county government or if we had the implied powers or what was House Bill 435 last year, we wouldn't have all these problems--if they were just turned around so that we were allowed to do anything not specifically prohibited, by state statute, 95% of the questions and challenges we have to our authority would vanish with just that one simple change. So we very strongly favor implied, residual or home rule powers, whatever you want to call them.

Classification of counties, this is something that the urban county commissioners favor very strongly. We're flexible as to the method that should be used. We, in essence, favor a classification based on population. We favor at least two classifications, urban and rural, but you could have more. You could have urban, rural, and urbanizing. The smaller counties that object really shouldn't object because it won't have any effect on them at all. If what they have works, fine, they shouldn't be forced to change. But there are a number of counties that want and need change. One other thing that we felt rather strongly on was, if you had a classification of counties

where all the counties of 100 thousand and above are in one class, and all below are in another class, a county in the 2nd group which is having urban problems should have the right to petition the state legislature for reclassification. Clark County which is right next to Montgomery County--if there was a breaking line of 150,000, would fall into the rural counties, but with Springfield they have most of the same type of urban problems more urban areas have. So we feel that there should be a system for a county to petition for reclassification to an urban type of classification.

County charters. We've had three attempts at county charters in Monty. County and we've never been able to get past the first hurdle--we've never been given permission to write a charter. The changes that are needed in the constitution are: first, to do away with the double vote which provides that you have to have a vote one year on whether you can draft a charter and elect a commission, and the next year vote on the charter. This is difficult because the charter comes back a year later, giving the opposition an entire year to build up their side against the charter; it gives proponents who have taken 10 months to write the charter only two months to sell it. They have two months to sell it. With the question, should the charter be drawn, the people have no idea as to the direction the thing is going to take, and it's a popularity contest. It has little to do with whether a person knows anything about local govt. And that charter commission just has no direction and doesn't have to be qualified on local questions. So that is the first one--do away with the double vote. Secondly, broaden the powers of the board of county commissioners in the area of county charters--allow the board which really lives with county legislation on a day to day basis, to appoint a charter commission. County commissioners are no longer part-time in urban counties. They are most qualified to know the type of things that county govt. structure needs. I'm not saying that we know what the people want all the time, but I do think that we know the type of tools that we need to operate with to make a county work in the 70's. Allow boards of county commissioners, who choose to do so, to appoint a charter commission to draft a charter for submission to the board of county commissioners for approval before it is submitted to the people. Thirdly, this only some of the urban county commissioners favor--some of them feel that the county commissioners ought to be able to draft a charter and place that charter to a referendum by the people. I don't know if the majority believe that way or not. It never came to a motion. Fourth, when charter votes are submitted to the people, I feel very strongly, particularly in light of the one man-one vote decision, that a simple majority countywide should suffice--that we shouldn't have to have this multiplicity of majorities.

County boundaries. This is something I don't think we've had discussion on and, as an individual, I really don't have a position on it. I would state that some change in county boundaries may be proper--it may be the way to go in the future. It seems to me that we've never had the chance to make the current boundaries work--we've never been able to make counties as they now exist work. It seems to me that the thing to do is to give counties across the state of Ohio the things they need--the powers to act and new structures--and then, based on results, make a determination as to whether changes in boundaries are wise or needed. In conclusion, I would say that as a county commissioner, we are well past the point where we need change in county govt. and the tools we have. I mentioned the fact that there are 48 political subdivisions in Monty. county. Of those actual 48 subdivisions, only one is areawide in nature and that is the county govt. Our problems are areawide in nature and we are being called on more and more to assume responsibilities in areas that counties have not been authoritatively involved in. The only local govt. that you have has at least a geographical representation in

this way is county govt. I really feel that the future of local govt. in Ohio may well ride with county govors. We're going to have to have the tools to face this responsibility, and we can't do it with 1851 material. We need laws that wrk with us, not against us.

Mrs. Orfirer: Before I respond, I'll ask if any of the other members have any questions.

Senator Gillmor: I do have one, and I'd like to say that your presentation was very good. On the charter, what would your recommendations there be--to let the commissioners submit a charter for a single vote.

Mr. Cloud: Right. A number of counties have recently had charter comm. A lot of the commissioners were very dissatisfied with the charter commissioners--they lacked expertise in the area of local govt. So they very strongly feel that a board of county commissioners should be able to draft a charter, whether they do it all themselves or have their administrators do it, or form a committee of county govt. officials-- and then have the board of county commissioners approve the charter, and certify it to the board of elections, to submit it to the people for a vote. Or two, allow the board of county commissioners to appoint the charter commission itself, which would then submit the charter to the board and then the people.

Mr. Kramer: The double vote here--in counties--has been pointed out as an obstacle. Can you think of any reasons why charter adoptions should be so much different between municipalities and counties? We have over 200 municipal charters in the state-- and the procedure for that is basically the same--what accounts for the difference?

Mr. Cloud: Recent attempts to change municipal charters in Mty. Cty., at least, have not been successful. However, I really don't know too much about municipal charter adoptions. I think Dayton's charter passed in 1913 when Dayton was almost destroyed because of a flood--and needed a change. The first city manager form of govt. in the country was created. But that was done under a crisis situation--and that may be part of it. There's another possibility--people can get identified more with cities. People are more familiar with what cities do--they have ordinance making powers--people can force certain actions. We've had all kinds of requests particularly for environmental legislation, and we have to explain to people that we will pass a resolution supporting your efforts, but we can't pass an ordinance to enforce the,. All our cities in Monty. county are non-partisan--there is an immense difference.

Mrs. Orfirer: Would you have any objection to allowing the present section to continue but also providing that it could be done the ways you suggest?

Mr. Cloud: No, that was going to be my next point. Leave the legislation as it is now, but add to that legislation the other capabilities.

Mr. Russo: I think Mr. Cloud brought up some very interesting points, particularly concerning classification that I brought up at the last meeting: what does a borderline county do that demands the right to do what Monty. County is going?--by answering it with the petition form to the legislature demanding that right even though it doesn't fit into that classification, which I think is an excellent solution. It fits the urbanizing rural areas with growth problems which lack the exact qualifications to put them into that classification, and that was an excellent presentation. The other one that I liked but I'm sure that the committee won't buy is the idea that county commis-sioners could adopt a charter and then let it stand for a referendum issue--which I

think would be one of the greatest things that could possibly happen. Because then you have the opposite effect of trying to sell something--and you get some autonomy. We've already got it, and it's working--it's taking a positive thing, but I don't really think we could get it adopted by constitutional change, but I think you've got a real impressive idea there.

Mr. Cloud: So does everybody else, but everybody says it is impractical. That was why it didn't come up in the form of resolution before the CCA. We think if anyone could get it to a vote on referendum we could beat that. Once we have reorganization and powers can demonstrate good results, we could beat a referendum. But I can see problems in getting the idea adopted.

Mr. Russo: Probably the charter could be standardized through the legislature. The standard charter could be adopted by local county govts, and then you eliminate 90% of the problem that you are talking about, although not as far reaching as what Monty, County might want--it's standardized enough to give you what you want but still you're adopting a change--it you don't like it, now get rid of it.

Mr. Cloud: There is one pseudo charter drafted now--the alternate form of county govt. Now we do feel strongly that with classification of counties, we could obtain what is known as the alternate form of county govt. What was accepted very favorably by the urban counties committee was that boards of county commissioners could be allowed to invoke the alternate form of county govt. whereby they would not only have the implied powers, but the personnel powers and the finance powers--and these are two things about the alternate form that we feel are good. We had the alternate form on our ballot in 1971--between myself and one of the other two commissioners we gave 320 speeches on the alternate form. There are a few bad things about the legislation--first, that you have to mail a copy of the entire legislation out to every voter in the county--most of whom can't read or understand it. Their personnel section is one for which there is so much need. We get pretty good cooperation in Monty. county from all elected officials, regardless of party--but there is a county somplace in Ohio that has 37 girls classified as clerk steno 2's and all working for the same county govt. which would make it seem like they had similar jobs--but they were being paid on 32 different wage scales--so clerk steno 2 didn't mean anything. In finance, we have to approve budgets for elected county officials, but have no control over their expenditures. Suppose they run out of money? What would fall back on the commissioner's shoulders to either close the office down, which we can't do, or come up with the money to operate for the next few months. We're given the responsibility of coming up with all the funds for county govt. to operate, but once we pass that appropriation, we aren't given any control over the way those funds are spent. We don't mind taking the heat. We just want to have the control after we've done it--we need the authority to operate county govt. County commissioners are ready and willing to do the job--they just want to have the authority to do that job. We elect people to office, and we expect them to do a job, but then we tie their hands behind their backs.

Mr. Kramer: On the question of the personnel and finance powers, have the urban county commissioners gone to the g.a. to ask for those powers by legislation?

Mr. Cloud: Yes, and the bills on both of them last year--neither of them made it out of committee. We have some more legislation drafted this year, on the implied powers.

Mr. Kramer: Could there be any objection to legislation to solve this problem of

financial accountability and personnel accountability?

Mr. Cloud: Yes, the county commissioner that comes in for a meeting on Sat. a.m. at 9 and it last until 10, and that's the last time he thinks about it until the following Sat. is not going to want to have all this power. That's why the legislation should probably say the county commissioners may appoint a finance officer with all the powers given unto the office. So what we really need are for the two to be available if we want to use them, and don't force Vinton County to do it.

Mr. Kramer: What I'm asking, I suppose is whether there really is a ny constitutional problem here or if it can be done by legislation?

Mr. Cloud: I don't think we'd have any constitutional problem, particularly if it were permissive.

Mr. Kramer: If the problem exists, and the counties are pretty much in agreement, then you could have the g.a. adopt this as legislation. Right now, without any constitutional change. But if as a matter of fact the counties are divided among themselves about how this can be done, and if the legislation is to apply to all counties uniformly, perhaps a constitutional change in classification is needed.

Mr. Cloud: I don't think there would be anything on which 264 county commissioners would agree--except that we need a payraise.

Mr. Kramer: Let's assume that without specifying any change in county govt. that the counties were very largely in agreement--assume 80% agree that this basic structural change was needed and petition the g.a. for it. What would you think the chances were of getting it?

Mr. Cloud: I'm not really sure we could get it out of committee. We finally got HB 435 out of Committee, but not out of Rules.

Mrs. Orfirer: Do you have the resolutions referred to earlier which were before the CCA in December, 1971?

Mrs. Eriksson: Were these all adopted?

Mr. Cloud: All except one. Within the county commissioner's assn. I believe we are getting a much higher degree of recognition now that all counties have some of the problems of urban counties. Some of them are more likely to vote for something that we want because they anticipate having the same problems that we are having now in the future. We did get support in the association for the following:

- A. Constitutional change to provide for the classification of counties by the state legislature with provisions for any county to petition the state legislature for a change in their classification.
- B. Constitutional change to give county govt. residual or implied powers to act in any matter not specifically prohibited by state statute.
- C. Constitutional change to allow county commissioners to draft and place on

8.

the ballot a proposed county charter without first submitting to the public the question of whether a charter should be drafted.

Other resolutions are not related to constitutional changes.

The Chairman thanked Mr. Cloud and Mr. Kellermeyer, and the meeting was adjourned.



Ohio Constitutional Revision Commission  
Local Government Committee  
February 19, 1973

Present were Mrs. Orfirer, Messrs. Ostrum, Fry and Celeste with staff members Kramer and Eriksson. The chairman presented a draft of Section 4 of Article X with proposed changes for discussion. The section deals with county charter commissions.

Mrs. Orfirer: We've had some complaints that the size of the commission is a problem. This draft attempts to keep this as flexible as possible, but to maintain the odd number, and it is left to the county commissioners to be able to specify the number, within the limitations that it be an odd number from 7 to 15, when the question is placed on the ballot. Any questions or comments about that? Does that seem reasonable? It certainly can be less than the 15--it leaves open the possibility for change.

At the moment there is no provision in the Constitution for repeal of the charter. In the hope that there will be county charters in the future, and we've provided that a charter may be repealed in the same manner that they are submitted for amendment.

Mr. Fry: How many county charter attempts have there been?

Mr. Kramer: There have been three actual submissions of charters in Cuyahoga County, one in Lake, one in Summit, at least one in Montgomery, and one in Hamilton. Possibly others. Some are recent. Lake County submitted a charter last year. Summit County submitted one in 1970. Trumbull County presently has a charter commission which is writing a charter, so there have been an increasing number of them in recent years.

Mrs. Orfirer called attention to the problem of whether persons holding public office should be eligible to serve on a county charter commission. There are several alternatives. The question is whether being a member of a county charter commission is to be considered holding public office. Another problem is that there are statutes which apply to some public offices, which say that you are not holding public office, some that do not say anything about it and some prohibit the holding of any other public office. The alternatives that would be open to us are to prohibit any public office holders on the commission, or provide that not more than half of the members of a county charter commission may hold public office.

Mr. Celeste: If we adopt the sentence "Election to a county charter commission does not constitute the holding of a public office" then it would be open to anyone.

Mr. Kramer: That is correct. There is a Supreme Court case now holding that membership on a county charter commission does constitute the holding of a public office. So that has been pretty well established. The possibility for us then is to negate that, or to limit the number of officeholders.

Mr. Fry: What kind of people run for county charter commissions?

Mrs. Orfirer: Someone this morning said that it is a popularity contest.

Mr. Fry: Are attempts made by political parties?

Mr. Kramer: No, political parties are very seldom in the forefront of the movement for a county charter commission. In Summit County for instance, it was a coalition of various good government groups, and the same thing was done, I understand, in Trumbull County. So there are really endless possibilities of people that could be elected to charter commissions. Experience can vary greatly. There are good arguments on both sides for having public officials on charter commissions or not on

charter commissions.

Mr. Ostrum: Members of the Constitutional Revision Commission don't hold public office, do we?

Mrs. Orfirer: No, it is specifically said in our statute that being a member does not constitute holding a public office.

Mr. Celeste: How, mechanically, would you enforce a provision that says not more than half of the members of a charter commission can hold other public office. Is half of 15, 7 or 8? And concerning candidates, if 20 of them are public officials and ten of them are elected, how do you decide which two resign since you'd now have more than half?

Mrs. Orfirer: You'd take it by number of votes--the top vote-getters would be those elected.

Mr. Celeste: But you might have public officials who might have more votes than nonpublic officials, yet they wouldn't hold the position. My own feeling is that the interest of public officials in charter development will be pretty clear cut and they can make their voices heard. I don't know that we lost much by prohibiting officeholders from serving.

Mr. Gotherman: The experience of municipal charter commissions is that one or more members usually is a public officeholder or employee--the mayor, a councilman, a fireman, etc.

Mrs. Orfirer: My feeling is that they should be permitted to be on. I would just be leery of having the whole commission composed of them.

Mr. Kramer: So the answer to that would be if the people don't want them on, they won't elect them.

Mr. Celeste: My feeling on that is if a mayor holds public office, if he is helping his community and serving his community, you will get his testimony, and that is what he is elected mayor for. I am an elected state representative, I hold public office; I have a certain public responsibility. And once you have two public offices, you always invite the possibility of conflict.

Mr. Kramer: If we decide that other officeholders should be permitted to serve on a county charter commission, there is the problem of the person who is holding a public office and is prohibited from holding another public office by statute or ordinance. So there probably should be at least some clarification. Within a county, for example, some mayors might be eligible and some not.

Mr. Gotherman: Speaking from the mayor's point of view, there certainly is a difference between sitting on the charter commission and presenting testimony. Having the right to vote--and the other is to persuade other people how to vote.

Mrs. Orfirer: If we leave it the way it is, some officers can and some can't serve on the county charter commission, depending on individual laws.

Mr. Kramer: If we said "does not constitute holding a public office", then there will be no conflict. In the case of those public officials who are not specifically

prohibited by statute or charter from holding other public office, we now have the difficult question, under common law, of whether there is a conflict even though it is not specified, whether the two positions are incompatible. We could leave it that way, but that's the situation that we are in now.

Mr. Ostrum: I think I'd favor the latter of the two things saying that charter commission membership does not constitute holding public office simply because then it is wide open to everybody. If the voters think the officials shouldn't serve, then they won't vote for them. It should be whoever the people vote for. It's the same with this commission. When we were dealing with the legislative article, certainly the legislative members of this Commission were influential. When we get to the judicial article of this Constitution, a lot of us are lawyers and are going to have thoughts on it. I think quite often, the feelings of the legislators on the legislative article of the Constitution were very helpful to me. I sat there as a layman and felt helped by having legislative members of the Commission talking and voting--and they didn't all agree.

Mrs. Orfirer: I think it is very helpful to have people who deal with these things every day.

Mr. Kramer: I suppose you can take cognizance of the fact that, at least on the charter commission, the position of people who hold other public office is open and notorious, and what they urge can be taken, keeping in mind their other interests.

Mr. Ostrum: Still, if we went along with the first idea, we'd still prohibit more than one half being public officers.

Mrs. Orfirer: I am persuaded by the argument that we should permit equal treatment of all within the jurisdiction of the charter commission. If we declare that it is a public office, you'd have some public officers permitted and others prohibited. I think that's highly unfair.

Mrs. Orfirer: Another point I want to mention is that this draft provides for direct submission by the county commissioners to the people of a proposed county charter.

Mr. Celeste: Is the 10% of the electors standard procedure for a petition to require an official body to put something on the ballot?

Mr. Kramer: Yes, and it's used fairly often in municipalities. It's in the Constitution, and it's the electors, which is defined as 10% of the electors who voted for governor in the last election.

Mr. Ostrum: It's not the number that are registered to vote, it's 10% of those who voted.

Mr. Kramer: There are some other proposed changes in this draft we should discuss. We didn't really talk about the first provision here--the change in language--which now says "The legislative authority of a charter county or the board of county commissioners of any other county may be 2/3 vote submit the question. The language as it exists seems to assume that the legislative authority of noncharter counties will always be the board of county commissioners. That is not necessarily true. There isn't any reason not to say "as provided by the legislative authority or the board of county commissioners of any county." The expression is used several times. It might be possible here in the first paragraph to define legislative authority and use "legislative authority" throughout as a substitute for the longer expression.

Mr. Kramer: Also in the first paragraph placing the question on the ballot would occur 75 days after certification of the resolution to the board of elections. This is the action that would put it on the ballot; also, the phrase "or primary" has been struck out. It is not possible to submit the question of the election of the charter commission at a primary election, although the charter itself has to be submitted at a general election. It seems to me that a primary election is an uncertainty to use for that, because it isn't provided for in the Constitution. County primary elections are held only every other year, and at different times, and if you use this provision then you get the difficult problem of the time period between choosing a charter commission and when it has to submit a charter. Right now it would have ten months to finish its work and then it just sits there until the following fall-a whole year away-and the general election. Unless there's some really good reason to provide for the election at the primary election, it would be better not to. It would simplify things to provide for only general elections.

Mrs. Orfirer: Shall we plan to act on this today or do we need another committee meeting?

Mr. Fry: I'd like to look at it again.

It was agreed that the committee would meet on March 19 in Cleveland at the Hollenden House for a dinner meeting at 6 p.m. for further discussion of and action on Section 4.

Mr. John Gotherman of the Ohio Municipal League expressed concern about keeping in touch with committee activities as they relate to municipal corporations, and noted especially that he was interested in the proposed draft of Section 5, giving counties certain home rule powers.

Ohio Constitutional Revision Commission  
Local Government Committee  
March 19, 1973

### Summary of Meeting

Present at the meeting were Chairman Orfirer, Mrs. Hessler, Rep. Celeste, and Mr. Ostrum, and Rep. Fry. Mr. Loewe and Mr. Vitz, of the Local Govt. Services Comm, also attended.

Mrs. Orfirer opened the meeting by summarizing the replies to the questionnaires we sent out to the County Commissioners regarding classification. There were 88 sent out, one to each county, and there were 34 replies--most of them have indicated that they are submitted on behalf of the commissioners as a group. They came out more than two to one in favor of classification, and pretty much as you would expect--the larger the county the more favorable towards classification. Of the thirteen "no" responses, three of them sent in comments with them, one of which was "instead of classification, permissive legislation allowing counties to use implied powers was needed." The second comment was that classification would only serve to give money to some and to penalize others. The third one said that the compensation of county officials already varies according to size, which is all that is necessary because all officials have the same duties. Five believed that population should be the only criteria for classification, and 16 believed that other factors should be considered, and the following factors were mentioned: number of local units, valuation of property, location of drainage area, all of this kind of thing. They listed quite a number of them. Of the 21 yes responses, 13 believed that counties should be permitted to be in more than one classification for different purposes.

The committee then discussed its proposed amendments to section 4 of Article X, relating to county charter commissions. It begins: "The legislative authority (which includes the board of county commissioners) of any county may by a two-thirds vote of its members or upon petition of ten per cent of the electors of the county as certified by the election authorities of the county, shall forthwith, by resolution submit to the electors of the county the question, "Shall a county charter commission be chosen?" The question shall be voted upon at the next general election, occurring not sooner than seventy-five days after certification of the resolution to the election authorities." Mr. Kramer noted that the Secretary of State wishes to make seventy-five days the uniform time for as many purposes as possible. That's the deadline for making the ballot now with a constitutional amendment in order to get absentee ballots out.

Mrs. Orfirer: "The ballot containing the question shall bear no party designation, and provision shall be made thereon for the election from the county at large of an odd number of electors not less than seven nor more than fifteen, as provided in such resolution, if a majority of the electors voting on the question shall have voted in the affirmative." The change is from a commission of 15 to one of not less than 7 nor more than 15.

It was agreed to insert "to such commission" after "election."

Mr. Celeste: What is the meaning of "at large"? Is that to insure that everyone in the county votes for everyone?

Mr. Kramer: There are no districts for this purpose. For a constitutional convention, there are provisions for electing delegates--by districts.

Mrs. Hessler: Couldn't we say, "the ballot containing the question shall bear no party designation. Provision shall be made for the election of the commission from the county at large consisting of an odd number of electors." "As such commission" refers back to about three sentences before.

It was agreed that the sentence would be reworded to remove the language difficulties.

Mrs. Orfirer: Let's go on. "Candidates for such commission shall be nominated by petition of one per cent of the electors of the county. The petition shall be filed with the election authorities not less than forty days prior to such election. Candidates shall be declared elected in the order of the number of votes received, beginning with the candidate receiving the largest number, but not more than  $\frac{1}{2}$  of the candidates elected shall be residents of the same city or village. The legislative authority shall appropriate sufficient sums to enable the charter commission to perform its duties and to pay all reasonable expenses thereof."

Mr. Kramer: Now this is where we get into the matter of whether charter commission members can hold other public office. It's been taken out of this draft altogether, because the other one was confusing.

Mr. Celeste: Does this mean that if you have an excess number of people from one community in the district, you drop down the line to people from other subdivisions?

Mrs. Orfirer: Right, this is the way it has always been. It used to be seven, but now it's  $\frac{1}{2}$ . Not more than  $\frac{1}{2}$  would be a maximum of 3, because 4 would be more than one half of seven.

Mr. Kramer: One city or village shouldn't have a majority.

Mrs. Orfirer: One thing we have to discuss is whether charter commission members could hold other public office. The present constitution is silent on the question of whether individuals holding other public office may be members of charter commissions. The supreme court has ruled that membership on a county charter commission constitutes the holding of public office, but holders of other public office may be prohibited by other provisions of the constitution or by law from holding other public office. Those holders of other public office, who are not specifically prohibited may be members of county charter commissions. So there is no uniformity at present. It applies to some public offices but not to all public offices. Being a member of a charter commission is probably not the kind of public office to which the prohibitions against holding other public office are generally applied. Arguments for permitting office holders to serve are: their knowledge and experience would be desirable, they would be able to gain the support rather than the opposition of other office holders, their political skill, and the general principle that the voters should have the right to select who they will. The arguments against are: the office holder whose name is familiar to the electorate has an unfair advantage, conflict of interest and opportunity to better one's own position by the way the charter is written, and potential partisanship. The changes that we could provide: 1) We could expressly provide that membership in a charter commission



constitutes the holding of a public office (this would not be a substantive change from the present situation); 2) to provide that membership does not constitute the holding of a public office; 3) expressly provide that any elector in the county is eligible; 4) limit the number of holders of public office that would be permitted on any charter commission.

Mr. Celeste: I wonder whether there is any kind of experience outside the state that indicates that there is a value to having public officials involved, anything useful in that respect?

Mrs. Orfirer: I don't know anything about outside the state, but apparently the situation in some counties has been opposition by the commissioners to the whole idea of a charter even without knowing what the charter commission is going to recommend.

Mr. Fry: I think there is a great deal to be said for the fact that someone in office can be a lot of help in this sort of activity. However, if we provide that holding another public office shouldn't preclude their being a member of the charter commission, then we should consider the larger area of what we've done as far as the Constitution is concerned on other offices. In many other areas, we've said you can't have dual office-holding. With respect to the Const. Rev. Comm., we've made specific provisions, I think anyone would agree that having people that are serving in other areas of state govt.--has helped us.

Mr. Celeste: The procedure we go through as a Revision Comm. is somewhat different. What we've developed and where it goes is a different animal from the county charter, which is in the very nature of a challenge--if not directly at least implicitly--to local officials. What we should consider is the quality of the people who might decide that their interests might be served by being part of a charter commission or b) that they might get themselves elected.

Mr. Kramer: The attorney general rendered an opinion about a year and a half ago that a member of city council could not serve as a member of a municipal charter commission.

Mr. Celeste: There are other serious questions--for instance whether a member of city council can also be an elected party official--a precinct committeeman.

Mr. Kramer: The question was apparently not considered by the people who wrote the section initially.

Mrs. Hessler: We do permit county commissioners to put their own charter on the ballot so this might be a reason for not permitting them to be members.

Mr. Celeste: I certainly feel that what we are talking about is a public office. Now whether by virtue of that we should prohibit public officials from serving on such a commission is a different matter. But I don't think we should consider as anything less than a public office a person who runs to become a candidate as a member of a charter commission and carries out a public trust over a specified period of time.

Mr. Ostrum: I agree with that. At the last meeting, I said that I thought that other public officials should be permitted to serve because of the short and limited duration

of a charter commission and because their experience in government problems ought to be helpful. I don't feel strongly one way or the other.

Mrs. Hessler: The impetus for a charter commission usually comes from citizens who are not themselves involved in the status quo, and by permitting the elected officials to run against the citizens who are interested in this, you not only give the elected officials the advantage of having a political name, but you give them a veto power over reform.

Mrs. Orfirer: Shall we then state that membership on a charter commission is a public office, and that the prohibition against holding other public office shall apply to members of a county charter commission?

Mrs. Hessler: I would think that it should be that no person holding public office should be a member of a county charter commission.

Mr. Fry: That would be more consistent with other constitutional provisions. I would reiterate that a commission is not the only way now to get a new county govt. for the people. If the public office holders want to have a charter, they can do it anyhow.

Mr. Kramer: At least the commissioners.

Mr. Celeste: I think that the public office holders who might seek this and might be most willing to speak up for this would be the ones who have tried before and lost favor. If you are silent or call it a public office then you are making it subject to whatever prohibitions there might be.

Mrs. Orfirer: I don't think we should be silent. We should state it if we want to prohibit other public officials from membership.

There was general agreement. Mrs. Orfirer read the next part: "The commission shall frame a charter for the county or amendments to the existing charter, and shall by a vote of a majority of all of the members election to the commission, submit the same to the electors of the county, to be voted upon at the next general election following the election of the commission. The commission shall certify the proposed charter or amendments to the election authorities not later than seventy-five days prior to such election, Amendments to a county charter or the question of the repeal thereof..." The language regarding repeal is new.

Mr. Kramer: It would be incumbent on the General Assembly to provide a method of getting back to the statutory form if a charter is repealed.

Mrs. Hessler: Gene, would there be any way of putting in a provision that if the charter commission decides to stay in existence, they could bring in another or the same charter?

Mr. Kramer: We have provided for that. It comes later.

Mrs. Hessler: I'm slightly confused by "to be voted on at the next general election following the election of the commission." Do we need the word "next?"

Mr. Kramer: It should just be the election.

Mr. Loewe: Does this language regarding submitting it to the elections authorities resolve the problem up in Summit county of to whom it is supposed to be submitted? Does it clarify that problem?

Mr. Kramer: Yes. The problem was an ambiguity in language problem of what constitutes submission. There is currently no language about how we get this on the ballot. We went through that in Summit county and finally got it resolved in the Common Pleas court, saying that it should be submitted through the Board of Elections.

Mr. Loewe: Wasn't there also a problem of who it was coming from? The county commissioners or from the charter commission? Also, about the mailing to the voters?

Mr. Kramer: That is clarified by providing that the commission shall certify it to the elections authorities. This says who does it and when, and provides an absolute deadline. The present provision doesn't even say when the mailing distribution has to take place.

Mrs. Orfirer continued with the draft: "Amendments to a county charter or the question of the repeal thereof may also be submitted to the electors of the county in the manner provided in this section for the submission of the question whether a charter commission shall be chosen. The legislative authority or charter commission submitting any charter or amendment shall not later than thirty days prior to the election on such charter or amendment, mail or otherwise distribute a copy thereof to each of the electors of the county as far as may be reasonably possible, except that, as provided by law, notice of proposed amendments may be given by newspaper advertising."

Mr. Kramer: This is a change from the last draft, which provided that the legislative authority would do the mailing. If there is hostility between the commission and the legislative authority, this would permit either to do the mailing.

Mrs. Orfirer: There would be a choice of using newspaper advertising for amendments.

Mr. Fry: Would the newspaper suffice for the charter also?

Mr. Kramer: The recent amendment to article XVIII, section 9, provided for the newspaper publishing of amendments only in municipal charters. That was adopted in Nov. of 1970, and the reason we are writing it this way is that that seems to be the policy which was supported.

Mr. Celeste: If we say the legislative authority or the charter commission shall, we aren't placing a responsibility on one or the other.

Mr. Kramer: It is intended to mean that whoever is submitting the charter, the legislative authority or a commission, has the responsibility. That's another problem that did arise in the Summit county litigation. The charter commission was doing the mailing, and the county commissioners were supposed to do it. So there was an argument over that, among numerous other things, and one thing that happened was that the board of elections was printed on the copy that was mailed out, and it was charged that this was improper, so all 200,000 copies were retrieved from the post office and volunteers sat up all night scratching out "the board of elections".

Mr. Celeste: Wouldn't amendments most likely come from the legislative authority?

Mr. Kramer: It has been suggested that a charter commission be able to submit amendments as well.

Mr. Celeste: Couldn't the charter itself prescribe a procedure for amendments?

Mr. Kramer: No. That's the problem with the municipal charter.

Mr. Celeste: Do we allow a county with a charter to establish a procedure for amending it?

Mr. Kramer: No, both the municipal and county charter provision that exist now provide procedures for the amendment. One question that has come up with some regularity involves the question of municipal charters which purport to require the municipal council to submit amendments that are proposed by a charter review commission under the charter, and the attitude now is that the council cannot be required to put these proposed amendments on the ballot because that isn't one of the methods of amendment that is described in the constitution.

Mr. Celeste: How do you get a proposed charter amendment on the ballot for a vote where it goes to the legislative body whose action is necessary--how do you get it on the ballot? By the board of elections?

Mr. Kramer: This is very difficult. We have provided in the first part of the section that the certification of the number of signatures on a petition is certified by the board of elections rather than to the legislative authority of the county govt. That is one possibility.

Mr. Loewe: Do you happen to know the number of places in which implementation by the legislature would be necessary? The newspaper advertising provision would have to be implemented by the legislature, is that right?

Mr. Kramer: Yes, or then it would have to be otherwise distributed. The general assembly would have the power to define the terms in the newspaper advertising. We provided that it had to be certified to the board of elections more than 75 days prior to such election. That would leave plenty of time for the draft to be mailed out.

Mrs. Orfirer: What do you do about a charter which comes about as a result of a petition? We have the legislative authority of a charter commission shall do thus and such, but what about by petition?

Mr. Kramer: The legislative authority would have to deal with it.

Mrs. Orfirer: "A charter of amendment shall become effective if it shall have been approved by the majority of the electors voting thereon. It shall take effect on the thirtieth day after such approval unless another date be fixed therein. When more than one amendment which shall relate to only one subject but may affect or include more than one section or part of a charter, is submitted at the same time, they shall be so submitted as to enable the electors to vote on each separately. In case of conflict between the provisions of two or more amendments or charters submitted at the same time, that provision shall prevail which received the highest affirmative vote."

Mr. Fry: Would it be the most votes or the greatest margin?

Mrs. Hessler: The most votes.

Mrs. Orfirer: "If a charter or amendment submitted by a charter commission is not approved by the electors of the county, the charter commission may resubmit the same, in its original form or as revised by the charter commission to the electors of the county at the next succeeding general election or prior thereto at a special election at a time fixed, in the manner provided for the original submission thereof.

Mr. Celeste: How essential is it that it be a special election? Because I think as a practical matter and as a political matter, if we feel that it's very important, we want to get it back before the voters while it is hot. But if you're talking about a special election at a time fixed by the charter commission, that may not be wise.

Mr. Kramer: The way I think that this provision would be used is that it would be submitted at the next primary, because you have to have certification 75 days beforehand, so after the November election, the earliest possible next date would be in Feb., and by the time they got together to talk about this, and decide what they were going to do, it could give them the opportunity to put it on in May, otherwise they'd have to wait until the fall election.

Mr. Celeste: Well, why not say primary or general election.

Mr. Kramer: Primary election is very bad language to use in a constitution because the constitution doesn't define a "primary" election and primaries are held at different times in some cities.

Mr. Fry: The reason we think this is a good provision--we think it is good for a charter commission to have a second crack at it.

Everyone agreed on this.

Mrs. Hessler: I'm just nervous about permitting it at a special election, which is a way to get something through that the voters don't want to pass--that's why they have them.

Mr. Kramer: With respect to state constitutional amendments, there is not much difference between May and November elections.

Mr. Fry: The schools feel that they've got a better shot at a special election. That's the idea that the people who want to get out and vote for it will, and those who weren't interested and would have voted against it will stay home.

Mr. Loewe: This commission would really be drawing the ire of the public because of the cost of a special election if the election were not held in November or in May.

Mr. Ostrum: This is an argument why they probably wouldn't do it.

Mrs. Hessler: If the charter is turned down at a general election, and then can be resubmitted at a special election where you don't have the greatest number of voters, I

don't think this would be good.

Mr. Fry: Whenever you have a special election, there is a lot of furor, a lot of editorial comment across the state about spending the money. I think Iola has a good point. We want to see these things go through but you don't want to sneak it through. The fact that they do it for municipal charter is not, to me, a good argument.

Mr. Kramer: There is, from the standpoint of the charter commission, another thing-- they've put on a long campaign, they've got a lot of volunteers, and raised a lot of money, perhaps, and then, perhaps, they've lost by a narrow vote. And they've been able to pinpoint the objections to it, and they meet and revise it, so the advantage to a special election is that they don't have to wait a year.

Mr. Fry: Why can't you identify that primary election? Don't use the word primary.

Mr. Kramer: But in the odd numbered years there is no primary everywhere.

Mr. Celeste: In my view, we're talking about a basic tool of governance here. And I think that on a matter of this sort, there is a strong argument for requiring the re-submission at a general election.

It was so agreed.

Mr. Loewe: This limits the submission of a defeated charter to one year. Effectively, you're really giving them another year.

Mrs. Orfirer: "The legislative authority of any county may, by a two-thirds vote of its members, or upon petition of ten per cent of the electors of the county shall, forthwith, by resolution submit to the electors of the county, in the manner provided in this section for the submission of the question whether a charter commission shall be chosen, the question of the adoption of a charter framed by the legislative authority, or in the case of a petition, in the form attached to such petition..."

Mr. Fry: This does get to the thing that Iola mentioned. It may well be that the way that you'd want to get a charter presented is without going through this commission approach.

Mrs. Orfirer: What's the ten per cent figure derived from?

Mr. Kramer: That's the number that is provided for for the submission of the question of electing a charter commission and also it parallels the municipal provisions.

Mr. Ostrum: I would question one thing. We did write in in the fourth line in the very beginning of this article as certified by the election authorities of the county-- could you renew that same phrase over here?

Mr. Kramer: I think it is incorporated by the language used here.

Mr. Fry: I think this is the most significant paragraph in the whole article.

Mrs. Orfirer: "Laws may be passed to provide for the organization and procedures of county charter commissions, including the filling of any vacancy which may occur, and



otherwise to facilitate the operation of this section." Can't laws be passed now to do this?

Mr. Kramer: It's not clear whether the g.a. can provide anything at all with respect to municipal or county charter commissions, because the provisions are supposed to be self-executing. You asked a question also about the petition method. I think that's also a question where it might be good for the general assembly to be able to prescribe the form of the petition. With respect to municipal charter commissions, the Supreme Court has ruled that some of the procedures in the statutes as to the circulation of a petition and the signatures and so on apply to the municipal charter petitions. This may be useful in meeting situations as they arise rather than having to amend the constitution. It's similar language to that concerned with the referendum. It is self-executing power, but the g.a. may provide for the operation of it by law.

Mr. Loewe: Are you saying that the legislature would have to spell out how the petition method of submitting a charter to the voters could be handled?

Mr. Kramer: The g.a. could help implement that. It could provide procedures that could be worked out, dealing with the form of the petition and such as that.

Mr. Loewe: You wouldn't have to follow the form that is used in the normal charter, in connection with commissions.

Mr. Kramer: The g.a. wouldn't have to do anything--this provision still is self-executing. This is just a permissive power for the g.a.

Mrs. Orfirer: Supposing the League of Women Voters wishes to submit a charter. They draft it, they submit it with a petition, they get the 10 per cent of the electors in the county--they submit it to the county commissioners who then submit it to the board of elections. The board of elections places it on the ballot and then the whole thing proceeds as before. Who pays for it?

Mr. Kramer: The county pays for the election and the mailing.

Mr. Ostrum: Should we reverse the 1st sentence in the last paragraph so that we begin with the phrase "To facilitate the operation of this section, laws may be passed, etc." I thought you were saying that the whole sentence is only designed for one thing, which is to facilitate, and not to hamper.

After discussion, it was agreed to leave the sentence as in the draft except to remove a reference to submission of charters and amendments, which is otherwise covered by the draft.

Mr. Celeste: "And otherwise" will also include the provision for funding. In providing funds for the charter commission, you in no way imply funds for the promotion of the charter, is that right? Are the funds limited strictly to the creation of the charter and stop once the charter is completed?

Mr. Kramer: Actually, I don't regard that provision as adding anything to the present law, so it would be the same as at present.

Mr. Loewe: So the private sector must bear the brunt of that cost.

Mrs. Orfirer: Gene, as I look back, it seems that we have made two major decisions of importance on this: two major changes, one of which is that we have provided that membership on a charter commission constitutes the constitutional holding of public office, and we also eliminated the special election. Does everyone agree?

Mr. Vitz: Before when we were talking about designation of public office, you pointed out that as it stands now it is rather discriminatory, because certain offices have this within them and others do not, and you have left it that way. That means that it will be different in different counties.

Mr. Kramer: Yes, in a charter city, it would be up to the charter. Some county officers would be able to serve on this charter commission, and other not.

Mr. Celeste: Rather than saying that it is deemed to be a public office, state that no person on it may hold another public office.

Mr. Kramer: The other provisions that there are now are either by the constitution or statutory or by municipal charter. They're subject to change--it doesn't really happen as a result of just this provision. It's not uniform.

Mr. Ostrum: Instead of saying that election to the county charter commission shall constitute the holding of a public office, what about "No person holding any other public office shall be eligible for election to a county charter commission?"

Mrs. Hessler: I don't want the sheriffs, the coroners and the county engineers to all run for the county charter commission.

Mr. Celeste: If you appear to be discriminatory among local officials, you just invite criticism.

Mrs. Hessler: I think that it is a mistake to have it apply differently.

Mr. Celeste: We say for example in the legislative section that a legislator may not hold another public office--so that no one in the legislature could also be a township trustee, or also something else.

Mrs. Orfirer: How far down does the list of public officers go?

Mr. Celeste: The term public office has been pretty well defined by court decision and atty. general's opinion. It includes any elected official; it does not include precinct committeeman, and I think statutory elected office is excluded from holding other public office. But it does include some certain appointed officials.

Mr. Kramer: It's usually someone who has some public authority--not someone who acts underneath someone. It's one who is holding office for a fixed term, rather than holding office indefinitely. There are a number of definitions, no one of which is all-inclusive.

Mr. Celeste: Another problem is we may be inviting a challenge to a charter commission where there is prohibition, perhaps in a city charter, prohibiting the holding of

public office. If the provision in the charter is meant to prevent conflict of interest, and yet another official is permitted to serve although he also is subject to no conflict of interest, and so you get into a hassle at the local level.

Mr. Kramer: There is the problem too that a person can be prohibited from holding another public office from one office and not from another.

Mr. Celeste: The question remains whether we want to make it, in addition, prohibit anyone from holding this public office who presently serves in another.

Mrs. Hessler: I'd like to do that.

Mr. Celeste: We may simply say "No member of a charter commission may hold other public office."

It was so agreed.

Mr. Loewe: What about the question of the possibility of competing charters? For instance if the charter commission works for a year, and is about ready to present its product to the public, and the commissioners say, well, we don't like what they've come up with and we have one we've been saving--we'll send that out. Isn't that a possibility? And how is that resolved at the polls?

Mr. Kramer: This is specifically provided for in the statutory provisions, concerning the alternative form.

Mrs. Orfirer: I really think we need something like this.

Mr. Celeste: We don't want competing charters on the ballot at the same time. When a charter commission has been elected, and it assumes the thrust and develops a charter, and there should not be other charters on the ballot during that period.

Mrs. Orfirer: The suggestion was made that we say "When a charter commission is in existence, no other charters can be submitted."

Mr. Kramer: There are three different types of charters--commission, county commissioners, and petition.

Mrs. Orfirer: If there was a charter commission which proposed a charter and the county commissioners also proposed one, I am opposed to having both on the ballot at the same time. This gives 2 commissioners the power to undo the work of the charter commission.

Mrs. Hessler: I think they should be restricted for the life of the charter commission only.

Mr. Ostrum agreed.

Mr. Celeste: If one goes through the expense and difficulty of creating a commission whose function it is to work deliberately toward the development of a charter, and then, when it has everything in final form, what it would probably do to avoid this last paragraph is to not have it adopted for certification until the 76th day before the election, in order to make it impossible for anyone else to comply. You create that kind of

situation.

Mr. Kramer: I don't think we can avoid that.

Mr. Ostrum: Perhaps the petition kind of charter should have to go through the legislative authority. They could only submit their own charter at an election at which no other charter is being voted on.

Mrs. Orfirer: "County commissioners may submit a charter only at such time when no other charter is on the ballot."

Mr. Kramer: I think you should say that anytime a charter commission charter is on the ballot. In other words, if a charter commission is elected in November, the county commissioners could not, then, anytime during that year, put a charter on the ballot.

Mr. Celeste: "We can't get too specific about when a charter commission is "in existence." Not to have two charters on the ballot at the same time when one is initiated by a commission. We have to develop language with that in mind. Let both the petitioned charter and the county commissioner charter go on at the same time, but just provide which one of them will be adopted. Prohibit both when a charter commission charter is on the ballot.

There was general agreement.

Mrs. Orfirer: How many people wish to provide that we should say that membership on a charter commission constitutes the holding of a public office, and how many of you want to go on and say that "No one holding another public office shall be part of a charter commission."

There was agreement to the second statement.

Mrs. Orfirer: The entire report is adopted, and we will be submitting this to the Commission--then there will be a public hearing on it, and a vote following the hearing.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
September 17, 1973

Summary of Meeting

The Local Government Committee met Monday, September 17, in Cleveland. The Chairman, Mrs. Orfirer, Messrs. Pokorny and Heminger and Ostrum, Representatives Russo, Speck and Celeste were present. Also present were Mr. Kramer, John Gotherman, Estal Sparlin and a representative of the Citizens' League of Greater Cleveland.

Mrs. Orfirer invited Mr. Gotherman as a representative of the Municipal League to make comments, either on behalf of the League or personally.

Mr. Gotherman noted that two problems had been referred from the Taxation Committee to the Local Government Committee: the indirect debt limit and pre-emption.

Mr. Gotherman - I don't have any official position on anything as yet. We have a special committee to consider the subjects this committee is studying. We are very much interested.

Mr. Kramer - Is this the committee that you referred to the law directors?

Mr. Gotherman - No, this is a broader based committee of municipal officials and law directors. It's a policy advisory committee. They met once during the regional discussions.

Mr. Gotherman was asked whether the Municipal League had any specific recommendations on Article XVIII. The answer was that it did not. He indicated that he did not think the home rule provisions should be changed unless there was a specific reason for doing so.

Mr. Gotherman - There are some areas where problems exist simply because people don't understand the decisions and because it's not written down somewhere. The cases are so numerous that there is always a question. Maybe you cannot eliminate the possibility of litigation. That's the purpose of the courts, to decide what the Constitution says.

Mr. Kramer - Do you agree that in the last 10 or 15 years there probably has been a higher degree of clarity on this subject?

Mr. Gotherman - I think so, yes.

Mrs. Orfirer - Should this greater degree of clarity be imbedded in the Constitution so that it will not be changed?

Mr. Gotherman - I don't view the Constitution as being unchangeable. I think a constitution should be a statement of broad general principles and you would not want to deal with great detail.

Mr. Kramer - There is a conflict between local police powers and powers of local self government. Would some change in language remove doubt about them?

Mrs. Orfirer - Is it possible that, if the language of home rule is not changed, it might be interpreted another way some day?

Mr. Gotherman - Any change that is made opens up another issue. There's no easy way to say "there's no easy way to say that's what it means, fellows, don't make any

more judicial decisions about it."

Mrs. Orfirer welcomed all present and said that the committee has not met for the last couple of months while the county recommendations were before the Commission to make sure they wouldn't demand great amounts of the committee's time before moving on to another area. Now the committee will get into the area of municipal corporations, starting with Section 7 of Article XVIII dealing with municipal charters.

Mr. Russo - I do want to say for the committee that the success of our county amendments is strongly due to your chairmanship.

Mrs. Orfirer - I certainly can't take all the credit by any means. I am just pleased that we have all worked together so well. Everybody here has spent a lot of time and effort on it. We'll start with Section 8 because it's a concrete area to get into. If we are able to wind this up tonight we'll get into some background material on the home rule sections.

Mr. Ostrum - Some of the things we're going to consider on municipal charters, follow pretty well what we have before the Commission--the recommendations for county charters, right?

Mrs. Orfirer - What we have in front of us is a comparison of the present provisions in the Constitution for municipal charters with our recommended provisions for county charters.

Mr. Ostrum - Depending on how our recommendation to the full Commission on how county charters goes I for one would like to see the two be parallel.

Mrs. Orfirer - We won't take final action on the municipal charter sections until we can get the feel of whether the Commission responds favorably to the county ones. We should present to them what we feel is right for municipal charters. If they want to amend it, fine. There are many things in the county charter provisions that are not in the municipal charter provisions, and we'll have to decide whether we want to recommend or not. In line 2, 10% of the electors may petition for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter?" We changed the 10% to 6% as a result of comments from some of the people at the full Commission meeting who felt that 10 was too large a per cent to be demanded. Estal Sparlin, do you feel that the same argument holds here? Or do you think that we ought to recommend change here?

Mr. Speck - What statistical evidence do you have that 10% is difficult to get?

Mrs. Orfirer - I don't know of any. Estal, do you have any records of that?

Mr. Sparlin - In the campaign here we tried to get only 3% and it was a tremendous task. I don't know of any place where they have ever gotten 10%.

Mrs. Orfirer - You feel it's almost a nonsensical provision because it can't ever happen.

Mr. Gotherman - The bigger the city, the harder it is to get the percentage.



Mr. Kramer - When people are all worked up about certain issues you can fairly often go out and get 10%. It's a much more difficult job in a large county than it is in the average municipality. The purpose of the provision is to make sure that it's something of substance and means something to a large number of people so that it's worth taking to an election.

Mrs. Orfirer - Would there be any wisdom in providing differently for different sized municipalities? Does it have to be uniform?

Mr. Gotherman - Ten per cent is too high in big municipalities. In smaller ones, 10% is conservative.

Mrs. Orfirer - What if we said that for the bigger ones it would only have to be 6%?

Mr. Speck - Does this include revision of charters?

Mr. Kramer - The first provision here is for the means of compelling the city council to place the question of a charter commission on the ballot. The same requirement obtains for listing amendments to an existing charter. I think there could be a reasonable distinction between municipalities and counties in this respect but to classify municipalities differently isn't really necessary.

Mrs. Orfirer - We have another alternative which the Citizens' League has recommended, I understand, and their recommendation is that there would be an official charter commission placed on the ballot every 20 years. So that you automatically have this opportunity whether you have 10% or not.

Mr. Ostrum - Wherever we have provisions that have gone through many committee meetings and we have put before the whole Commission on counties, just to be consistent, I think we should make the same recommendation here and spend our time talking about the latter thing you mentioned--like having the question on the ballot every 20 years.

Mrs. Orfirer - I understand your point, Dean, but hesitate to do it that way because counties and cities are two very different animals and I don't think we should assume automatically that what's right for a county would be for a municipality. Where they relate I'll try to pull in the new ideas. For example, with 6% as an alternative, I think we could discuss something such as the 20 years putting it on the ballot.

Mr. Russo - If we're going to recommend stronger county government then we don't want to give municipal government any more power and the opportunity of changing their structure. If we want to get a strong form of county government, then we should try to make changes in municipal government difficult.

Mrs. Orfirer - I don't think that's ever been a consensus that we wanted to weaken the municipalities. It's just that we wanted to strengthen counties to the extent that they need powers to perform the new tasks which will be demanded of them.

Mr. Russo - I'm looking at it this way. If we do get a stronger county government, some municipalities may determine that now the county has some new powers and consequently we're going to make charter changes to say that we will not under any circumstances deal with county government at any time.

Mr. Kramer - A municipality now has full control over whether it wants to cooperate with the county in any particular matter. The Constitution guarantees a referendum

to the municipality on that. The matter of adopting a charter doesn't really change the municipality's powers in that respect.

Mr. Russo - It puts the onus in the other direction. At the present time you are in a negotiable position. The county can negotiate with the municipality, insofar as signing an agreement. Once you adopt it as a municipal charter amendment then you've got a problem on your hands.

Mr. Kramer - The only remedy, if that's a problem, would be to prohibit municipalities from having charters altogether or prohibit them from having such a provision in the charter. If you wanted to go that way, I would do it directly, not indirectly. It would make it more difficult to adopt charters altogether.

Mr. Russo - I was thinking of not making it easier for them.

Mr. Kramer - This is probably the means by which the electors of the municipality can tell the council to put the issue on the ballot. Two-thirds of the legislative authority can always put the question on the ballot. I think that the experience has been in the municipalities, as John pointed out, that there's not been much of a problem where any substantial group of citizens were concerned, although it does increase in difficulty as the municipality gets larger.

Mr. Heminger - Tony has mentioned one if you want to go that far. I would favor the 6% so as to be consistent.

Mr. Kramer - Another factor is that counties are not only larger than municipalities but they also tend to be more diverse in their make-up. They don't have the homogeneity that a municipality has. It would be more difficult to get a petition circulated in a county.

Mr. Speck - I think if you can get any substantial number of people to sign a petition, the issue ought to be voted on.

Mrs. Orfirer - John, does the Municipal League have any position on this?

Mr. Gotherman - My only comment would be that if that's the only thing you're going to amend in that section, that would not be worthwhile to put on the ballot.

Mrs. Orfirer - I don't think it will be. We have quite a list to go through here, but I think we ought to save our efforts for things that are really meaningful.

Mr. Ostrum - If we did try to strengthen county government maybe we should leave well enough alone.

Mrs. Orfirer - Let's move on and leave this open temporarily. We'll get back to it. In the county recommendations we have specified that electors shall be "as certified by the election authorities of the county."

Mr. Kramer - A problem that has come up in a number of the counties is that the county officials represent one side of the question of whether there should be a county charter commission and the Constitution at present puts the county commissioners in the position of having to decide whether a petition is sufficient. And the idea of changing this was to have a neutral board of elections which has the capability for making this determination. The county commissioners don't have access except by

going to the board of elections to find out who the electors are, to know if you have proper petitions.

Mr. Speck - It seems to me that if we make a series of editorial changes, this is a valid one.

Mr. Kramer - I've seen this same thing come up in a number of municipalities. We saw that recently in Cleveland, where the legislative authority was on one side of the issue. There has been much litigation over the years, where the board of elections really is the body the best qualified to carry out the function.

It was agreed to.

Mrs. Orfirer - The county recommendation requires submission of the question at the "general election" rather than "regular municipal election." A general election is held each November but the regular municipal election is held in the odd-numbered years. I am assuming that we want it at the next one and not a year hence. Otherwise the municipal provisions provide for the submission of the question at a special election.

Mr. Kramer - But you can have a special election then.

Mrs. Orfirer - It probably makes sense to change it to general election.

Mr. Speck - Who pays the cost of a special election?

Mr. Kramer - It costs more if it is a special election on other than the day of primaries or general election. Then municipalities would have to pay the entire cost of the election. It does cost quite a bit more to have a real special election.

Mrs. Orfirer - But the people who call a special election run that risk.

Mr. Kramer - The change here is one that doesn't mean too much really except that whatever election you're going to use has to be not less than 60 nor more than 120 days after the ordinance providing for it so that the usual practice is to time the passage of the ordinance such as the regularly scheduled primary or general election will fall within that time.

Mr. Celeste - Why not change "regular municipal" to "general"? It doesn't really change the substance of it.

Mrs. Orfirer - In the rest of the sentence--"if one shall occur not less than 60 nor more than 120 days after its passage." What we have in the county proposal is to require at least 95 days before the election as recommended by the Secretary of State for both the county and municipal provisions. The county recommendations contain no maximum times since there is no provision for a special election. The Secretary of State recommends 140 instead of 120 days as a maximum in the municipal section. So what he would like is 95 days minimum and 140 days maximum, as compared to 60 and 120. Does this make any difficulties that you are aware of?

Mr. Gotherman - What they have done in the past is to hold those questions submitting changes, charter revision changes, until the session just before the election. This would require them to have a meeting at which they schedule that issue sooner.

Mr. Speck - We passed a bill this year requiring all school issues to be voted on to be certified at least 75 days to the Secretary of State. It would seem to me that we could pick up the 75 and be consistent with that.

Mrs. Orfirer - So the two local kinds of issues would be the same. It's not a great matter in any event. What is your pleasure?

Mr. Kramer - Mostly the burden of this falls on the local boards of elections. The Secretary of State will have nothing to do with the local charter election except to look out generally for the boards of elections throughout the state. I wouldn't pass over too lightly John's comment that there have been many elections held under the present provision, and it has been possible to provide absentee ballots. It is one thing to change it with respect to counties where there are few of these elections but it is another thing to change the existing provisions of municipalities involved, but there have been successful elections under the existing provision and people are used to this so there should be some good reason for changing the existing provision. Not that it has to be necessarily parallel to the county. It might be a good idea for the Secretary of State to say why he thinks it necessary to change; any change that the committee would consider right now would be as a result of his urging and not that of the municipalities.

Mrs. Orfirer - What is the effect of repealing the 120 days?

Mr. Speck - It sets a time limit for calling a special election, where you pass an ordinance and there is no regularly scheduled election. You would have to call for a vote on an election within that time.

Mr. Kramer - If you change the provision to a general election so that they could be held in the even years at least on the question of electing the charter commission you would always be within less than one year of the elections.

Mrs. Orfirer - Assuming we leave that, is there still any valid reason to change the 120 days to any other number or to eliminate it?

Mr. Gotherman - The real hang-up here with 120 is that, in the case of a November general election, this makes it easier for the council to recess during the summer period. Whereas if it were 140 instead of 120 it would be difficult for them to recess long enough on their regular business schedule which permits them to delay acting on the special proposal. That's the only reason for extending it. If they had to get all their business done before June they would be severely handicapped. It's just a matter of incentive and I think that's one reason for considering it. I like the idea of uniformity though.

Mrs. Orfirer - Do you want to make it 75 and 140?

Mr. Speck - It seems to me that what we do is to say regardless of the circumstances it's got to be held within 60 to 120 days. I'm not sure I understand how a council could get around holding it. All they would do is to move it from a general election to a special election.

Mr. Kramer - There's a cost factor and the onus would be on the proponents.

Mr. Speck - My own feeling is that in something as important as a charter should be voted on at a general election. Charter amendments are a different matter and

maybe special elections might be appropriate.

Mr. Russo - Polls show that independents are increasing and they simply do not go to a primary election. They don't have any reason to go except for the issues and many times they don't even bother with them. But they will go to a general election.

Mr. Speck - I have had the experience of having people call and say can we go vote in a primary election?

Mrs. Orfirer - Let's contact the Secretary of State. If he has good enough arguments to change our minds we will; otherwise we'll leave it the way it is.

Mr. Russo - And send a copy to the Municipal League too.

Mrs. Orfirer - Line 7 refers to tying the election to the passage of the ordinance. The county recommendation was tying the election to the certification of the ordinance to the election authorities so I suppose it should be changed to be consistent.

Mr. Celeste - You don't mean certification of the ordinance to the election authorities. What happens on a petition?

Mr. Kramer - There's always an ordinance here. The petition goes to the council first which passes an ordinance. They could be mandamused to do so. Again the considerations are a little different here than they were in connection with the county charter provision in that Article X, Section 4 provided that the election shall occur thereafter. It wasn't clear what that really referred to. The date of passage of the ordinance is a date certain so that it's not much of a problem. It's probably a better procedure to say after the date of certification to the election authorities. That date is the measuring point.

Mrs. Orfirer - Let's add it to that list of things to do if we are going to get into cleaning up this provision if we agree to make substantive changes. Otherwise, we will leave it alone. Is that agreeable to everybody? Line 11 in the county recommendation we said not less than 7 nor more than 15 charter commissioners. Is there any reason why it should be left at 15 for our municipal charter?

Mr. Kramer - The considerations are exactly the same. The Secretary of State is concerned about it's being a bedsheet ballot of 40 or 50 people running for a charter commission, with a serious problem in tabulating the results. There's no magic in the number 15.

Mrs. Orfirer - Anybody have any objections to that kind of change?

Mr. Kramer - It is up to the council as it would be up to the board of county commissioners under the county charter to determine the number.

Mr. Celeste - You could argue that it's easier to interest people in a somewhat smaller body. You sometimes get better people with a smaller slate. If we make changes I don't see where we weaken it by allowing that flexibility.

Mrs. Orfirer - The county provision reads "the commission shall frame a charter for the county or amendments to the existing charter and shall by vote of a majority of all the members elected to the commission". With 7, that's 4 people. Do you want it the same as the county?

There was no strong feeling for change.

Mr. Sparlin discussed the need for a provision requiring regular, periodic review of city charters.

Mrs. Orfirer - Going on, there are no present constitutional provisions regarding municipal charter commission candidates. The county recommendations provide for nominations by petitions signed by one per cent of the electors filed 75 days before the election with candidates being declared elected beginning with the largest number of votes received. The Secretary of State recommends that these provisions be added to Section 3 for municipal charter commissions.

Mr. Kramer - There's no prohibition against petitions in Article X, Section 4. This would merely specify the number of votes required. They would be nominated by petition signed by one per cent of the electors. Candidates are elected according to the number of votes received so that they would not really change that matter. There would just be the addition of some language. In the county provision, we added specific language authorizing the General Assembly to provide for matters not covered by the Constitution. It became an issue as to whether group petitions could be allowed and since they are not prohibited the General Assembly could authorize them.

Mrs. Orfirer - Is there any valid reason not to make it conform? I think this makes it pretty clear what the procedure is to follow. Another provision in the county recommendation is that the charter is to be adopted by a majority of the authorized number of members of the commission. I think we automatically do this if we are going to have seven. I think you're going to find some objection to the county one when we get into it. I would like to suggest we hold this until the next meeting. I'd like to see what the Commission does about it before we spend time here discussing it.

There was discussion about whether public officers should be prohibited from being charter commissioners.

Mr. Kramer - All the public officials who by statute or charter are prohibited from holding another public office are now prohibited anyway.

Mrs. Orfirer - Do you wish to pursue this conversation now or shall we hold it to see what the Commission does on the county recommendation?

Mr. Russo - I don't have any problem. I'd just as soon move on and throw in this no commission member shall hold public office.

Mrs. Orfirer - Submission of a charter within one year has been interpreted to mean 365 days, which means that if the charter commission is chosen at one general election and the general election in the following year is more than 365 days later, a special election to vote on the charter must be held. The county charter members under our county recommendations can be chosen only at general elections and the charter is submitted at the next general election. Can't we just change it to 13 months and eliminate the problem? I just don't see any reason to not change it.

Mr. Kramer - Since we're dealing with possible special elections here you can't say at the next general election.

Mr. Celeste - Can't it say that a charter itself must be submitted in a general election?



Mr. Kramer - It could be done. It isn't now. That is the case with county charters. But municipal charters can be submitted at special elections, or whatever time the charter commission determines.

Mr. Celeste - My own feeling is that I'd rather delete the months and require that it be submitted at a general election.

Mrs. Orfirer - The county recommendations require the proposed charter to be submitted to election authorities not later than 75 days before the election. There is no comparable provision here. We added it in the county one; now do we want to add it here?

Mr. Kramer - It might be a point of contention. I think the general practice is 60 days.

Mrs. Orfirer - Do you want to leave it out?

Mr. Kramer - I think some deadline should be there because one of these days there will be a lawsuit. All the other issues now are going to be 75 days.

Mr. Gotherman felt that the municipal provisions are working well now.

Mr. Kramer - In the absence of a specific time for mailing and distributing copies in the county charter provision the county had a lawsuit on that issue among others, as to what was a reasonable time for distributing copies. In the municipal, it must be within 30 days, whereas the county charter didn't have a deadline.

Mrs. Orfirer - Temporarily we'll go along on that. The next one is simple--proposed charters must be mailed "or otherwise distributed." Do we all agree? Also, a county charter takes effect on the 30th day after approval; a municipal charter at the time fixed therein. I don't see any reason to change that. Now we are up to additional matters that are not provided for in the municipal charter section, all of which were provided for in our county recommendations. There is no provision for repeal and adoption of a new charter at the same time. I think there should be.

Mr. Gotherman - There is a procedure for repeal and that's a simple initiative. A Supreme Court case determined that initiative could be used for that purpose. There's nothing in the Constitution that says you may repeal a charter, but it can be done by initiative or by amendment.

Mr. Kramer - After the Supreme Court decision about a year and a half ago on the attempt to put several constitutional amendments on the same ballot I certainly do not have a great deal of confidence in this approach any more. The idea of completely revising a charter by means of amendment consisting of 40 or 50 separate changes in a charter would create great difficulties with the court in submitting what they regard as more than a single question at once. The real problem here is trying to determine when you have a new charter. What's the distinction between a new charter you're presenting to the people and we've reviewed our old charter, we've had it over a number of years, and what we're going to vote on is what amounts to a new charter. How do you distinguish that from, say, a charter review commission being appointed and saying we're going to change this and this? There seems to be no distinction between voting on a new charter and voting on the original charter--you have to take the whole thing as a package. In the second case there it is many disconnected things--you may favor some and you may not favor others.

Why should you have to accept all these things? Why not be able to pick and choose among them? They are not necessarily related.

Mr. Celeste - There is a point in the life of any document especially with local government undergoing constant change that you might want to rewrite that document. It would seem to me that if we establish a procedure to the point where it is re-writing the charter itself you would have 80% of the words in that document the same as the original.

Mr. Kramer - But suppose you have a charter commission elected and they propose two amendments to the charter and say "Well, this is our new charter." It provides that there shall be no multiple family dwellings constructed in the municipality without a vote of the people for one change and the other change is that we have a commission form of government. They say "this is our new charter." "Vote yes or no on both of these." But there is no provision now for that revision unless you-- there's no way to submit a new charter, unless you find some common thread to say that you're changing the form of government and get the courts to accept that you're doing that. It's always a chancey thing. What usually happens when the charter review commissions go to work is exactly what I described. They take a look at everything and they want to change the method of electing councilmen and then they want to change the number of members on the planning commission and they really are a whole series of disconnected and unrelated changes, some of which just seem like a good idea to them. And very often these charter commissions feel that changes are good and we ought to put them all on at one time. There are many people, I think, who would take the opposite position that these are all unrelated. We should be able to pick and choose among them, and vote on these amendments separately, just as the General Assembly is prohibited from log rolling.

Mr. Celeste - The same with the constitutional revision. We can go to a convention and try to rewrite the whole document or we can do it on an item by item basis. There ought to be some choice.

Mrs. Orfirer - Is there any reason why if they called it a whole new charter that it still can't provide for yes and no on separate amendments? Does the whole thing have to be a single yes or no vote?

Mr. Kramer - But the question is, is there some way that all of these things go on as a single question, without forcing someone to vote for the whole thing when there is a part he doesn't want?

Mrs. Orfirer - We went through this when we talked about the constitutional amendments and decided that they had been so much of a failure when they called for a single yes or no vote that there was no point in submitting them that way. And I think people would come to this same recognition about a municipal charter.

Mr. Pokorny - And you've got to vote on the whole thing and maybe that's a better way to have complete reform.

Mr. Kramer - How do you provide some guidelines so you can say this is a new charter?

Mr. Gotherman - Why can't the body that is duly chosen make a responsible judgment that it is going to submit something that it calls a new charter?

Mr. Russo - Even though it's not a new charter? It's only a few amendments to the charter?

Mrs. Orfirer - I don't think we can provide for every contingency.

Mr. Kramer - If you just say that whoever is submitting this can call it a new charter you really do open the possibility of log rolling and forcing people to accept something that they really don't want.

Mr. Russo - I think we should pass over that and give it some thought.

Mrs. Orfirer - Anyone else have any different ideas?

Mr. Kramer - The courts now decide whether it is one amendment or not. You might make a distinction between amendments submitted by council or petition and amendments submitted by a commission. The commission can review the whole thing. That would be one way of distinguishing. In Rocky River they had 16 amendments. They had a review commission and they went through section by section. It was difficult to do it on a voting machine. Maybe somebody could make a due process argument.

Mrs. Orfirer - Do you want to fuss with this a little bit? I think I would feel better having it written out, embody John's proposal in one and your thinking in another. Let's have it in front of us. There is no provision for submission of a charter directly by petition of a specified percentage of voters, as provided for in the county. We decided we could get it on in three different ways and one was by petition. I presume the same argument would hold here. Any objections? A temporary yes. All right. No provision for submission of a charter directly by the legislative authority. We provided that 2/3 of the county commissioners could put a charter on the ballot. Do you want to provide that 2/3 of a city council can put a charter on the ballot? I presume that the Municipal League would have no objections to any kind of opening up of this.

Mr. Celeste - If you have both of these together then the legislative body gets its own out first.

Mrs. Orfirer - You can get it maybe put on the ballot but you still have to get it passed.

Mr. Gotherman - There's a big difference between putting something on the ballot and having a campaign to have it adopted.

Mr. Kramer - If you take the position that you're going to allow grouping of amendments on a single ballot, what is the distinction between allowing 10% of the people to submit a petition to a legislative authority which they are going to have to act on and allowing the same number of people to submit a charter amendment?

Mrs. Orfirer - How do you think they will respond to having it submitted directly by the legislative authority?

Mr. Gotherman - I'm just guessing what officials of cities will say but I think they will oppose direct submission.

Mr. Kramer - Right now 10% of the people can circulate a petition to amend the charter to provide that fire chiefs shall be the chief executive of the city and firemen shall constitute a city council and if the electorate approves this you have the same situation. It's a change in submission.

Mrs. Orfirer - I suppose it's political philosophy again that whether you feel that 10% is a substantial enough group so that they deserve to be heard, that they should at least get a whack at it.

Mr. Ostrum - We may know more about this at the next meeting when the county recommendations are discussed at the Commission meeting.

Mrs. Orfirer - We may be premature with this tonight but at least we've gotten some of the thoughts out on the table. Should action by the legislative authority be necessary in order to place on the ballot the question of calling a charter commission petitioned by the necessary number of voters?

Mr. Kramer - It becomes a mandatory duty. They can't delay it.

Mr. Pokorny - What's the purpose of this? If there is no discretion, why have it? You said they could be mandamus'd and make them do it. Why?

Mr. Kramer - One of the reasons is that to the extent that the Constitution does not now provide for all of the matters at an election the municipal council has the authority to provide for those matters, so that the same ordinance by which the question is submitted provides for the details of the election.

Mrs. Orfirer - Should authority be provided for candidates for a charter commission to run as a slate? Did I gather from the previous conversation that there is nothing to prohibit them from doing this?

Mr. Kramer - There is nothing specific on this subject.

Mrs. Orfirer - Has it ever been challenged in court?

Mr. Kramer - That's what I was indicating before. With power given to the General Assembly to provide for matters not specifically covered in the Constitution, we're not proposing any change.

Mr. Gotherman - Presently there isn't any statute on it.

Mrs. Orfirer - I gather then your answer to this question is no.

Mr. Celeste - If we say anything about how to select candidates then we would allow slates as well as individuals.

Mrs. Orfirer - My suggestion would be to leave it alone. I don't see any reason to build it into the Constitution. Are we temporarily agreed that's there no need to put this into the Constitution? Should the Constitution make any provision for expenses of a charter commission or for election of officers and other procedural matters? Remember we said in the county one that the legislative authority shall appropriate sufficient sums to enable the charter commission to perform its duties and to pay all reasonable expenses.

Mr. Speck - Has it happened that money has not been provided and we have to make sure that it is?

Mrs. Orfirer - Yes, the question would be whether you want that permanently in the Constitution so that it cannot be changed.

Mr. Kramer - I think this is a case too where it is specifically provided for as to counties and in all the recent county charter attempts that instead of asking the counties we probably should be asking the municipalities because we don't want to be creating an implication that municipal councils don't have to. I doubt that would happen.

Mrs. Orfirer - John, is there anything in this wording that you feel would be prohibitive? Look at page 2 on the bottom, No. 6. That certainly isn't limiting in any way.

Mr. Gotherman - Probably not.

Mrs. Orfirer - Laws may be passed to provide for the organization and procedures of county charter commissions, including the filling of any vacancy which may occur, and otherwise to facilitate the operation of this section.

Mr. Celeste - Why should it be provided for the county but not cities?

Mrs. Orfirer - Because there have not been provisions for the counties. The city councils have been doing it this way and it's worked.

Mr. Kramer - It is only by common law that we know how many votes it takes for a municipal charter commission. But there's no provision for filling vacancies.

Mrs. Orfirer - Isn't it provided by charter?

Mr. Kramer - No, you can't provide for it. There's no way of filling it.

Mrs. Orfirer - I appreciate John's feeling in this regard. He doesn't want to take a chance on something that is working.

Mr. Kramer - It's only an enabling act, to allow the General Assembly to do this if the need arose. It doesn't require the General Assembly to take any action.

Mr. Celeste - Let's find the gaps in the existing ability of the municipality to get a charter commission through its duties and then let there be some kind of provision that will fill that gap. I hate to see extra legislative duties.

Mr. Pokorny - I have no particular feelings.

Mr. Speck - I am reluctant to add duties.

Mr. Kramer - If it isn't in the municipal section, perhaps it shouldn't go in the county section either.

Mrs. Orfirer - Why don't we leave it for the time being, assuming that you will work out some language to provide for vacancies.

Mr. Russo - I kind of agree that the appointing body should be other than the commission itself. Let's say the charter commission is just elected and a vacancy occurs. There's no problem in filling that vacancy but as the charter commission goes along and the lines get drawn as to what is going to be policy and then somebody dies then the vote is going to line up--who's going to come on the team? Who's going to be the team that names the guy? It all depends on the timing. I think that maybe the

legislative body of that municipality should be able to make the appointment.

Mr. Gotherman - There are many possible choices--the mayor, the council, the governor, the General Assembly. The mayor may not want anybody, because he doesn't like the idea of a charter.

Mrs. Orfirer - The more we discuss it the more I agree that we have to be realistic about this and just because we've done it in one place there's no obligation to do it in another. Should a defeated charter be able to be resubmitted? If so, how many times? When? In its original form or altered? You realize what we did in the county. We obviously felt a strong need because counties have not been able to adopt charters. We wanted to make it possible for them to resubmit them without going through the whole process again. Is this kind of thing a problem for municipalities or not?

Mr. Pokorny - Cost factors are involved. Ours was about \$88,000.

Mrs. Orfirer - It hasn't been difficult, has it, to adopt a city charter?

Mr. Gotherman - Resubmission has been tried, but they had to have the whole process again.

Mrs. Orfirer - Can we provide that it can be resubmitted in an altered form without going through the whole process again?

Mr. Gotherman - It would be difficult to determine what is alteration.

Mr. Speck - Who provides for it?

Mrs. Orfirer - The Constitution.

Mr. Speck - Automatically so?

Mrs. Orfirer - If a charter or amendment submitted by a county charter commission are not approved by the electors of the county the charter commission may resubmit the same in its original form or as revised by the charter commission, to the electors of the county at the next succeeding general election or prior thereto at a special election at the time fixed by the charter commission. That's what we recommended.

Mr. Kramer - They have a limited time and they can revise it and resubmit it.

Mrs. Orfirer - I gather, John, that your objection would be to "resubmit the same in its original form."

Mr. Gotherman - One of the things we hear from voters now is "Oh, they're resubmitting that thing and will wear us down until we pass it." This is particularly true of tax and school levies. I wonder if we're leaving ourselves open to that kind of criticism if we provide for automatic resubmission without some alteration.

Mrs. Orfirer - We have one more. The Citizens League suggests that the question of calling a charter commission be automatically placed before the voters of a municipality (presumably one having a charter) every 20 years, just as the question of calling a constitutional convention is placed before the voters of the state every 20 years. Would this be a reasonable alternative to the initiative petition for repeal?



Mr. Gotherman - Charter review is presently undertaken very successfully without such a constitutional provision.

Mr. Sparlin - I doubt if there was any intention to interfere with present successful conditions for charter review. We have acknowledged their success and seen some very good work done. But we want to take the other route of having a voter-chosen commission to look at the thing, again, keeping in mind the advisability of creating a situation where you wouldn't have a new voter-chosen commission every two years in the case of a badly divided community. One would want to preserve the elements of stability in municipal government that we have had. Somehow, in the time period to get back to that original method of selecting a commission is the goal of this proposal. If you could somehow see your way clear as a committee to put that together with other similar proposals I hope that something could come of it.

Mr. Kramer - Relative to this question I don't know of any obstacle to providing in a municipal charter for the election of a charter review commission. The real question is whether you can require putting it on the ballot if it is not in the charter. So that would require constitutional change.

Mr. Sparlin - The proposal here is that that possibility could somehow be available at least at periodic times. I would hope you would put it together with the other things under consideration. I personally have very good experience with the earnestness and application of locally appointed charter review commissions and in most cases they really try to do a good job. Some are wildly unsuccessful but there have been some very good ones.

Mr. Kramer - In some cases the municipal council has served a very useful function in weeding out some of the unnecessary stuff whereas charter commissions have a tendency to feel that they have to justify their existence, by proposing some very picayune amendments.

Mr. Gotherman - I think the Constitution is wise in providing that screening process by council but perhaps that's not the only thing that ought to be available.

Mrs. Orfirer - I know we've gotten a lot of requests to eliminate this ability of a council to not put these things on the ballot.

Mr. Kramer - That's not a total obstacle to people getting on what they want. They can always do it by petition.

Mrs. Orfirer - Apparently it isn't easy.

Mr. Sparlin - There have been some interesting examples here of where a very strong local group could come to a charter review commission and beat the bushes for a proposal. Then when they have felt they had a good hearing and a chance to discuss all the alternatives despite the review commission, nothing was done in answer to this request. So there are all kinds of ways of dealing with the public problem.

Mrs. Orfirer - I've heard very persuasive arguments that you have these commissions appointed and they work like the devil and come up with amendments and then the council just scratches them. And they feel they have a right to see what the charter commission has recommended.

Mr. Kramer - In the case you're talking about I'm sure they were appointed by the council. These bodies now are advisory to the council.

Mrs. Orfirer asked Mr. Gotherman to respond to the points raised at the meeting and in the memorandum.

Mrs. Orfirer - I'd like to hear from you and your constituents as we move along. I'd like your recommendations. There will be many times when we will go along with what, in their wisdom, they have found to work well.

The committee will meet in Columbus on October 15 following the Commission meeting.

Ohio Constitutional Revision Commission  
Local Government Committee  
October 15, 1973

Summary

Present at the committee meeting on October 15 were Chairman Orfirer, Representatives Fry and Speck, and Mr. Ostrum. Also attending were staff members Gene Kramer and Ann Eriksson, and Mr. John Gotherman of the Ohio Municipal League.

Mrs. Orfirer began the meeting with the questions about municipal charters raised in a memorandum comparing sections 8 and 9 of Article XVIII with the county charter sections which have just been adopted by the Commission.

It was noted that the question of calling a county charter commission can be petitioned by 6% of the electors, according to the proposal agreed to by the Commission. Should the percentage also be reduced from 10% to 6% in the Section 8 for municipal charter commissions?

Mr. Gotherman - It doesn't make any difference to us.

Mr. Kramer - It is difficult in a large municipality to get 10%, but it is difficult to think of a way that would distinguish between large and small municipalities for this purpose.

Mr. Fry - We reduced it in the county provisions, and perhaps should do so here to be consistent.

Mrs. Orfirer - Is there any reason why it should not be reduced?

Mr. Kramer - No great reason. Most county charter attempts have been in the large counties and you have large populations to contend with. Municipalities of all sizes have been able to adopt charters without any particular difficulty. There doesn't seem to be a great amount of experience that indicates that this is an unduly burdensome requirement.

Mr. Fry - Is there any advantage to consistency, counties with municipalities?

Mrs. Orfirer - Municipalities and counties are different types of entities and I don't think that consistency just for consistency's sake should be the final standard.

Mr. Ostrum - But we should consider these things we have done in counties as possibly relevant to municipalities also.

It was agreed that the percentage would remain at 10%.

It was agreed that the language "as certified by the election authorities of the county" would be added in section 8 as the body to determine the validity and sufficiency of the petitions.

Mr. Gotherman - That shifts the burden of establishing the sufficiency of the petition from council to the board of elections. If the board determines that it is sufficient and the city thinks it is not, it shifts to the city the burden of going forward with a law suit. Now, that burden is on the petitioners if the council thinks the petition is insufficient.

Mr. Ostrum - The petitioners will still have that burden if they disagree with the board of elections.

Mr. Kramer - There are instances of city council being opposed to what the petitioners want to do and rejecting the petition, even though they do not really have adequate records to determine whether a person is qualified to sign the petition.

Mr. Gotherman - We don't have a position on this.

It was agreed that that provision would be incorporated in the draft.

The next question was whether the question of electing a charter commission could be submitted at each general election. Presently, it can be submitted only at a regular municipal election, which is every other year, not every year. The change was agreed to on the basis that it might cut down on the number of special elections.

The next question was whether the question of calling a charter commission must be submitted to the board of elections 95 days before the election, as proposed by the Secretary of State, rather than 60 days as presently provided.

Mrs. Orfirer stated that the Secretary of State's office had been contacted for the reasons why this change is recommended. She read a summary of his response:

"His reason is that 60 days is not enough time to take the necessary steps for candidates to get their names on the ballot. The ordinance calling for the question to be placed on the ballot must also provide for election of members to the charter commission at the same election. With the election of 15 members, there are often several slates of persons who file together. Some city councils also provide for write-in candidates so that the board of elections must make special provisions on the ballot for all these names and spaces.

"The Secretary of State's office does receive complaints from boards of elections that 60 days is not enough time. He realizes that city councils which do not meet during the summer would no longer have the possibility of acting early in September to place this question on the ballot. He feels that it is, nevertheless, important to allow the additional time for the board of elections to prepare for the election.

"With respect to the maximum time, presently 120 and he recommended it be changed to 140 days, he has no strong feelings about this--in fact, he does not know why a maximum time is needed.

"The large number of persons, 15, to be elected to a charter commission is a disadvantage because the voters have so many names to choose from, it ties up the voting facilities, and makes a "horrendous" job of counting the ballots, especially if write-in candidates are permitted."

Mrs. Orfirer - It seems to me that protecting the rights of the citizens is more important than convenience for the board of elections. If we can do both at the same time, fine. But good government should not be sacrificed for the convenience of the board of elections.

Mr. Gotherman - Councils have the problem that it is not an easy job to take through the council the question of whether or not a charter commission shall be chosen. Sometimes it passes quickly, but sometimes it is very controversial, and the vote will be close. Our position would be that the election authorities haven't been doing that bad a job in the past, they have been making the deadlines. They may not like them because they are caused to act more promptly than they ordinarily do,

but it's more important to allow those issues to go on the ballot on a timely basis than to meet the desires of the election officials. It's a question of balancing which is more important, although I do not think it is a critical issue. Ninety-five days is a long lead time for the election authorities.

Mrs. Orfirer - Do we need an outside time?

Mr. Fry - I'd like to explore a little more the advantages of some consistency between the county and the municipal sections. I can see those who oppose county charters saying, why should we permit 6% on petitions for counties and require 10% for municipalities? What is wrong with making that 6%? When we get back into the full Commission, it would seem to me to make sense to be able to show some consistency in the approach unless there is a good reason not to do so.

Mr. Gotherman - You might find yourself in the position of taking away from the municipalities something that was never there in the case of counties because they didn't have it. For example, there has been little use of county charter procedures, but municipal charter commissions have worked out their own procedures and organization. Some of these procedures have been rather strenuous--such as the 2/3 majority requirement that some have adopted. If you say, as you did for counties, that the General Assembly will provide procedures, then you are denying a power which is presently being exercised by municipal charter commissions.

Mrs. Eriksson - Reducing 10% to 6% wouldn't be taking anything away from cities, it would be giving something to the people who are petitioning for a charter commission.

Mr. Gotherman - Right. I am talking about the general principle of changing the municipal charter sections just for the sake of consistency. This is a source of dissent if it means that some kinds of things will be taken away just to be consistent with the county sections.

Mrs. Orfirer - Where it makes a difference to municipalities, we will not conform just for the sake of consistency; we will discuss each point on its own merits. Since there so seem to be some reasons for reducing the 10% to 6% as the number of signatures necessary for a petition on the question of calling a charter commission, shall we agree to that change?

It was agreed to.

It was also agreed to leave the time before the minimum election at 60 days and remove the maximum time.

Mrs. Orfirer - The county recommendations tie the time of the election to the certification of the ordinance to the election authorities whereas in the municipal section, it is the time of passage of the ordinance by council.

Mr. Gotherman - We have a problem in changing to certification. It's not a great problem, but it is a practical one. Most city councils just have a part-time clerk of council. The passage of an ordinance is clearly determinable, recorded in the records of council. When it's certified is less clear--the clerk could, by neglect or even purposefully, fail to certify or even in due course it might take a week to certify to the board of elections. It is probably safer to rely on the passage date rather than the certification date. It leaves open the question of when is the certification date. These things usually fall toward whatever deadline is fixed.

Mrs. Orfirer - Aren't there statutes relating to certification of ordinances to the election authorities? Don't they have to be done in a certain period of time?

Mr. Kramer - There is no specific provision on this question. I think the argument goes the other way--now we have no deadline specified as to when this goes to the board of elections. The board of elections could, if they decide they don't have enough time, reject it, although I do not believe that has ever happened. Requiring certification to the board of elections by a specific time is the same kind of requirement that's made for tax levies, bond issues, etc. The ordinary case is that submission to the board of elections is the deadline rather than action by council itself.

Mrs. Orfirer - Shall we include this recommendation?

It was agreed to recommend that the deadline be the certification of the ordinance to the election authorities rather than passage of the ordinance.

Mrs. Orfirer - The next question is whether we should have the submission of the charter commission question only at a general election.

Mr. Gotherman - We have a strong objection to eliminating the special election here. The usual argument--that fewer people vote at special and primary elections--really doesn't hold much water when you are talking about a municipal charter election because it's such an overriding issue and so controversial and so well publicized in the community that there is no question that all people interested in the charter issue come out and vote. On the other hand, at a general election, you pick up a lot of people who have no idea about the municipal question but come out to vote simply because they come out to vote every November.

Mr. Ostrum - A special election could be the primary, couldn't it?

Mr. Gotherman - Yes.

Mr. Kramer - This would be taking away something that exists now--the ability to place the question to the voters at a special election.

Mr. Gotherman - Another problem would be that villages making the transition from village to city always wait until the last year to decide whether they want to become a statutory plan city, or a charter city. To permit them to elect a charter commission only at a general election would require them to have a greater lead time or they would have to make a double transition.

Mr. Kramer - The number of special elections on the question of electing a charter commission is relatively small, anyway. The special election on the charter itself is much more prevalent.

Mr. Fry - This question comes up in school questions all the time--most people don't care and it's really only those who feel strongly for or against who should vote anyway. It gives those who are organized an advantage.

Mr. Ostrum - If we keep the special election but eliminate the maximum time, do we need the expression "within the time aforesaid"?

Mrs. Orfirer - If there were nothing there now, I would tend to think we should not permit the special question, but unless there is a good reason to change, my



inclination would be to leave it the way it is.

Mr. Fry - I can see good arguments on that side, also.

It was agreed to keep the special election but reword the sentence to eliminate "within the time aforesaid" since the maximum time is being eliminated. There should be 60 days between the passage of the ordinance, or certification to the election authorities, and the election, whether general or special.

Mrs. Orfirer - Since the county recommendations do not now include a recommendation to reduce the number of charter commissioners to not less than 7 nor more than 15, rather than requiring 15, I assume that we do not want to make that change here either.

It was so agreed.

Mrs. Orfirer - The next point is the provision for candidates. There are no present constitutional provisions regarding municipal charter commission candidates. The county recommendations require petitions signed by 1% to be filed 75 days before the election.

Mr. Gotherman - Presently, the ordinance refers to procedures established in the election procedures. The problem might be some unusual procedures in the ordinance that the board of elections does not otherwise ordinarily encounter. But it is easy enough for them to read the ordinance.

Mr. Fry - One per cent of the electors doesn't sound like too many, though.

Mr. Kramer - No, it isn't. Of course the "75 days" would have to be changed in conformity with the other provisions. I don't know of any reason why minimum provisions like this could not be provided in the Constitution--there is nothing burdensome about it, and the municipal attorney drafting the ordinance could look to the Constitution for direction as easily as to some other city's ordinance. It would then be a uniform procedure that all boards of election would know about. It would be similar to the second paragraph of Article X, Section 4.

Mr. Fry - I have great respect for letting cities do what they want,, but it seems to me that if there is no unfairness in this and we can do it without taking away anything from anybody.

Mrs. Eriksson - This provision was incorporated in the county provisions after some years of experience with the municipal sections, and I think that whoever drafted the county provisions must have used the municipal sections as a base and then added things about which there had been some problems or questions.

Mr. Gotherman suggested that the 60 days before the election be changed to 75, and that the deadline for candidates to file be fixed at 60 days before the election.

It was so agreed, and agreed to add the provision for candidates filing petitions with 1% signatures.

Mrs. Orfirer - In the county recommendations, we have eliminated the provision that no charter commission member can hold other public office.

Mr. Ostrum - If we eliminate that here, do we also want to include the affirmative language so that there will be uniformity with respect to all public officers?

It was agreed to insert the same language in the municipal sections.

Mr. Gotherman agreed that it would be a good idea to clarify that point, because every time a councilman is elected to a charter commission, the question is raised whether he forfeits his council seat.

It was agreed to add the provision that a charter must be adopted by a majority of the authorized number of members of the charter commission for submission to the voters.

The next provision discussed was the submission of the charter within one year after the election of the commission. It was agreed that this should be extended to 18 months. Mr. Gotherman stated that, even without the technical problem of "one year" when the next general election is more than 365 days from the election of the charter commissioners, many charter commissions feel that the job cannot be completed in that period of time, and need additional time to do a thorough job. Especially when some time must be allowed for public comment and study before the election.

Mrs. Orfirer - We're now at the provision that the charter must be certified not less than 75 days before the election.

Mr. Kramer - If 18 months is provided for doing the work, it would not seem burdensome to get the charter to the board of elections 75 days before the time of the election.

It was so agreed.

The next provision is mailing or otherwise distributing a copy of the proposed charter prior to the election.

Mr. Gotherman - We have a technical problem with this provision. We are not sure much thought went into the original constitution on the difference between registration counties and nonregistration counties, poll books, whether you are required to send the charter to people you know are dead or no longer living there but their names are on the poll books, particularly in nonregistration counties. We've had a few charters that have been attacked on the basis that proper notice was not given because the technical requirements of this section were not met. We think it should be clear that this notice is an attempt to notify everybody but that it does not actually require that every person be notified. For example, a husband and wife living in the same house, can one charter addressed to both of them jointly be sent, or do you have to send one copy to each person?

It was noted that both the original language regarding distributing of initiated constitutional amendments and the language in the county charter sections call for mailing or other distribution "as may be reasonably possible" thus precluding the holding up for technical reasons if the distribution is reasonable. It was agreed to add such language in the municipal section.

Mrs. Orfirer - We now get to the new matters that were added to the county provisions. The first is a provision for repeal or for repeal and adoption of a new charter at the same time.

Mr. Kramer - The problem here is whether we should provide for repeal and adoption of a new charter or whether you can adopt a new charter by the amendment procedure. We didn't reach a conclusion at the last meeting. We can provide for a simple repeal as we have done in the county recommendations.

Mr. Gotherman - Our group thought it would be fine to provide for repeal and repeal and enactment of a new charter at the same time, and also for the grouping of amendments so that you would have maximum flexibility in how you wanted to present things to the voters. So that you could repeal; repeal and enact; or amend and group the amendments.

Mrs. Orfirer - What do you mean by grouping amendments?

Mr. Gotherman - If you are dealing with taxation, for example, that might take four articles of the charter. We would like to be able to group those together for just one vote.

Mr. Kramer - We provided in the county section for grouping of amendments as long as they relate to one subject. The judgment question is what is one subject?

Mr. Gotherman - If there is an issue about grouping, the Constitution ought to resolve it in favor of grouping rather than otherwise.

Mr. Kramer read the one subject per amendment provision from the county section.

Mrs. Orfirer - I move we lift that wording and insert it here. What is the county wording on repeal and repeal and adoption of a new charter?

Mr. Kramer - It provides that amendments to a county charter or the question of the repeal thereof may also be submitted in the manner provided for submission of the question whether a charter commission shall be chosen. If you want to get rid of your charter, either a 2/3 vote of the legislative authority or upon a petition, you can submit the question, shall the charter be repealed?

Mr. Gotherman - You could also in the same fashion submit the question of repeal and re-enactment which is really just a complicated amendment.

Mr. Kramer - You could elect a charter commission and put on the ballot the repeal of the old one and adoption of a new one at the same time.

Mr. Gotherman - So many times a charter revision commission makes so many suggestions that they have, in essence, written a new charter. Not everything is new but a great many things are. So you could have a new charter without electing a charter commission because you have a charter review commission and they submit their recommendations to council and they can put it on the ballot as an amendment.

Mr. Kramer - In the case of municipalities, we have a separate section dealing with amendments. In this section, we could add repeal and adoption, and save the questions about amendment for Section 9. The county section has everything in one section.

Mrs. Orfirer - We will add the provisions for repeal, etc. in this section and deal with the amending questions in Section 9. The next provision is one about submission of a charter directly by petition of a percentage of the voters. At the last meeting,

we agreed to add that to the municipal section.

Mr. Gotherman - We have strong opposition to that idea. It would permit police and fire organizations and other vested interest groups to put their version of what city government ought to be on the ballot as a specific charter without requiring them to go through the deliberative process of having the merits of their reasoning aired over a period of time and giving the people the right to elect their own charter commission. In recent years we have had a lot of experience with police and fire organizations going to the people with amendments and this would enable them to go with their own charter. They do not have difficulty in most instances in getting 10%. Any dissident or vested interest group could cause a particular structure for the government to be voted on. The same thing is true of the council--they should not be permitted to submit their own charter.

Mr. Kramer - But since you can group amendments, what is to stop a police or fire organization from submitting drastic alteration to the form of government in the form of a group of amendments which are very extensive?

Mr. Gotherman - It is possible for that to happen. At least it is limited to those things you can do by amendment and it is limited to those cities which already have charters adopted by what we believe is the better process--a charter commission.

Mr. Ostrum - How about the legislative authority submitting its own charter?

Mr. Gotherman - Our group feels that neither the council nor a group of people should be able to submit a charter directly and avoid the deliberative process of a charter commission. In Celina, for example, the council might submit a charter taking all the power away from the mayor because they do not get along. You would always be fighting this issue of somebody putting their charter on the ballot.

It was agreed that there would not be a provision for direct submission of a charter by either the legislative authority nor by petition.

Mrs. Orfirer - The next question is whether action by the legislative authority should be necessary in order to submit the question of electing a charter commission?

Mr. Kramer - The ordinance does provide for a number of matters about the election, and is not just a perfunctory thing. You could provide for the procedures either in the Constitution or by statute rather than in the ordinance. Then if the petition is signed by the 6% of the people, it would go directly to the board of elections and the council would have no part in it.

Mrs. Orfirer - What would be the reason for this? In case city council is opposed to the idea of electing a charter commission?

Mr. Kramer - Yes. We have in the county sections the provision that the legislative authority must pass an ordinance, to provide for matters having to do with the election not otherwise provided for.

Mrs. Eriksson - By providing that the sufficiency of the signatures be checked by the elections authorities rather than by city council, since city council is mandated to submit the question if there are sufficient valid signatures on the petition, you have probably eliminated the major element of control that city council has over

submission of the question, anyway. The council can be mandamus'd to submit the question if there are sufficient valid signatures on the petition.

It was agreed not to make the change since there is no compelling reason to do so. The next question was whether authority should be provided for charter commission candidates to run as a slate.

Mr. Kramer - The names appear individually on the ballot and you have to vote individually, but you only need to get a person to sign one petition instead of 15. The 1% requirement would not change the present practice, and there is no need to add anything to the constitution since that is the way it presently works. The Secretary of State has always provided that type of resolution--for a slate of candidates to be nominated by one petition, but voted on separately.

Mrs. Orfirer - The next question is whether the constitution should make any provision for the expenses of a charter commission or for election of officers and other procedural matters?

It was agreed to add the sentence requiring the payment of expenses.

Mrs. Orfirer - How about the other provision--that the General Assembly may pass laws providing for the organization and procedures of county charter commissions, including the filling of vacancies?

Mr. Gotherman - We would object to giving the General Assembly power to pass laws regulating the rules and procedures of charter commissions. We don't know what kinds of restrictions the General Assembly would place on them. As it is, they all adopt their own rules and procedures and we really haven't had great problems with doing it this way. You probably will raise more technical issues if you let the General Assembly get into it with complicated, rigid procedures than if you allow charter commissions to determine their own procedures. We really don't have any problems except for vacancies.

Mrs. Eriksson - What does usually happen when a vacancy occurs?

Mr. Gotherman - They just don't fill it.

Mr. Kramer - I don't disagree but perhaps my expectations about what the General Assembly would do about it are different. I think the General Assembly would not act on this unless they were asked by somebody to act--it's not mandatory, it just says that laws may be passed.

Mr. Gotherman - My thinking is that we would have a statute on it, especially as we have new members in the General Assembly coming off city council who are more concerned than in the past with the details, legislative and administrative, of city affairs. I see a lot of statutes coming our way on what a charter commission may or may not do, publication requirements, etc. It really works well now because it is flexible. Suppose a charter commission wants to have a 2/3 vote requirement. Many would still want to do this at least to add things in a preliminary draft.

Mr. Kramer - It is possible, of course, that even under the present constitution the 2/3 vote for submission of a charter would be unconstitutional. The common law with respect to deliberative bodies is a simple majority and there is a question whether you can require more in the absence of something in the constitution. The General

Assembly could provide a set of procedures for a charter commission which would apply in the absence of a different set of rules adopted by the commission itself.

Mrs. Eriksson - If the only real problem is filling vacancies, why not just provide for that or provide that laws may be passed to provide for the filling of vacancies?

Mrs. Orfirer - Why don't we provide that the mayor or council should fill vacancies?

Mr. Kramer - I think it is a legislative matter. The General Assembly may provide one way of filling vacancies and experience will show that it's better to do it another way and it's easier to change the law than the constitution.

Mrs. Orfirer - We haven't brought the General Assembly in any place here so far, so why should we here? Shouldn't this be as self-executing as possible?

Mr. Kramer - The self-executing theory goes to making it possible to get a charter drafted and on the ballot without reference to any other law, but I do not think that some of these details about elections and filling vacancies on the charter commission, once elected, should have to be self-executing.

Mr. Gotherman - There are two points of view--we think the charter commission can do this as adequately and perhaps more adequately than the General Assembly. Some members of the General Assembly aren't that anxious to see charters adopted.

Mr. Kramer - With the filling of a vacancy, it seems to me you must have some pre-existing procedures. If you have several occurring at once, the question is whether you fill one and he participates in filling the next, etc. The problem with the commission itself dealing with that question is that it is not likely to come up until the situation occurs. Nor many have enough foresight to adopt such rules at the beginning.

Mrs. Orfirer - Why not provide that the charter commission shall provide for filling vacancies upon election?

Mr. Kramer - It seems to me that's cluttering the constitution.

Mr. Ostrum - Even though we did insert that sentence in the county section, I'd just as soon leave it out unless there is a good reason to put it in.

It was agreed that, at the present time, a vacancy on the municipal charter commission cannot be filled.

Mr. Gotherman - There are people in the General Assembly who would make it as tough as possible to operate a charter commission. They may come from a noncharter city and may not wish to see the politics of that community changed.

Mrs. Orfirer - I think that my vote would be against bringing the General Assembly into this.

It was agreed to hold that question open until the next committee meeting.

The next question was whether a defeated charter could be resubmitted and under what circumstances?



It was suggested that the defeated charter could be resubmitted in its original form or as changed by the charter commission within 13 months of the date of the election on the original. It was so agreed.

The next question was the suggestion that the question of calling a charter commission be automatically placed before the voters every 20 years. This idea was rejected.

Mrs. Orfirer - There is one more point--whether the changes suggested by a charter review commission should go directly on the ballot and not be subject to city council. Many review commissions feel that after all the time they have taken to deliberate on the charter and study it, they should have the right to go directly to the people and not have their work reviewed or altered by city council.

Mr. Kramer - That really should be part of Section 9.

Mr. Gotherman - Would you consider one further thing that is not in your proposals--to permit the charter commission to submit the charter directly to the election authorities rather than to city council, because the council has to take time to pass an ordinance and they may run into problems getting it to the election authorities on time; often they have to pass such an ordinance as an emergency and may have difficulty doing that. We would like to eliminate the idea that there might be some discretion in the council after the charter is drafted whether it is to be submitted. We'd like to see it submitted directly with some provision for changes if they find there's a typing error in it.

It was agreed to so provide in the section for direct submission. There was discussion how to provide for correcting errors up until a time - suggested 30 days - before the election when an exact copy of the charter must be distributed. It was agreed that such a provision would be drafted before the next meeting.

The committee then turned to Section 9 of Article XVI.

Mr. Gotherman noted that some question has been raised about whether notice of charter amendments is required because of the use of the word "may" in this section, but it was agreed that this was not a serious problem.

It was agreed that amendments could be petitioned by 6% rather than 10% of the electors, to conform with action just taken in section 8 for petitioning for the question of electing a charter commission. It was also agreed to have the validity of petitions checked by the election authorities rather than by city council.

The next question was whether a charter review commission should be provided for whose recommendations could go directly to the voters or council could be required to place them on the ballot.

Mr. Gotherman - We feel strongly that the charter review commission should be advisory to council, just as the Constitutional Revision Commission is an advisory body to the General Assembly. If a charter review commission feels that council treated them badly, as citizens they can organize a campaign and get petitions signed to propose their amendments and then council is required to place them on the ballot. Experience has shown that some review commissions start out they propose extensive revisions to the charter just because they want to change things, not for any really good reason. Then council didn't think that was in order and didn't adopt all their recommendations.

But they can still put it on by petition if they feel strongly about it. We also thought that you shouldn't try to structure a review commission in the Constitution because almost every charter has some provision for it. Let the charter decide how they are to be selected and so forth. Some charters even say that they will submit the review commission's recommendations directly to the people, and those charters may be invalid to that extent because it provides a different method for amending the charter than is provided in the Constitution.

Mrs. Eriksson - Once a city has a charter, can the question ever be put under section 8 to elect a charter commission?

Mr. Gotherman - No, but the charter itself could provide for an elected commission. We don't think that should be structured in the Constitution.

Mr. Kramer - But the question is unanswered as to, if you have an existing charter, how do you get rid of it and get a new charter? Under the procedures for charter review commissions, you are always limited to the amendment process and the one subject per amendment.

Mr. Gotherman - I don't think a charter could provide for electing a charter review commission which would write a whole new charter, to be put directly on the ballot. The only way to revise a charter is to amend it, by a 2/3 vote of council or a petition to place the amendments on the ballot.

Mr. Kramer - You can't really submit a new charter. It has to be through groups of amendments.

Mr. Gotherman - If you repeal a charter, then you have no charter and have to start all over again with the election of a new charter commission.

Mr. Kramer - What we want to suggest is a procedure for the repeal and the enactment of an entirely new charter at the same time.

Mr. Gotherman - And we would want to provide for it within the structure of the charter itself. What we want to avoid are constitutional provisions which trigger an automatic disruption of city government. The Constitution should not promote flipping from one form of government to another. If there is some demonstrated need to change the form of government, a way can be found. But some people just like to come up with changes just to make changes. We need to have some stability.

Mrs. Eriksson - The question is on the ballot every 20 years to call a convention to revise the state Constitution, and people do not react favorably to it.

Mr. Gotherman - The state Constitution is more sacred than city charters, and people are more reluctant to change it. The votes on a city charter can be very close, and it can be very easy to promote change.

Mrs. Orfirer - If you have a group of citizens dissatisfied with the present government, how do they get a vote on repeal of the existing charter and immediate enactment of a new charter?

Mr. Gotherman - By amendment.

Mr. Kramer - You would have to authorize them to submit the new charter directly by petition and this charter if approved would replace the old one.

Mrs. Orfirer - Can a charter commission be in session preparing a new charter while the old charter is still in operation?

Mr. Gotherman - A charter review commission can do that, but charter review commissions are provided for by the charter, not by the Constitution. The charter review commission may be working on a new charter and they will go to the council with that and council will put it on the ballot as an amendment. You then get into the tangle of whether or not those amendments are linked together sufficiently to permit only one vote, but that is being done presently.

Mrs. Eriksson - Are charter review commissions ever elected?

Mr. Gotherman - I don't know of any that have been, but I don't know any reason why they couldn't be.

Mrs. Orfirer - What I want to get away from is the city council that doesn't want to see the charter changed and thus refuses to put the review commission's recommendations on the ballot.

Mr. Gotherman - It's the same as with the Constitutional Revision Commission-- the General Assembly didn't want a constitutional convention any more than city council wants a charter review commission going directly to the people with a new form of government. A lack of disruption of government.

Mrs. Orfirer - But the people could have voted for a convention. I want some way besides the petition of going around a reluctant city council.

Mr. Kramer - We could simply permit the election of a charter commission even where you have a charter. They would be charter commissions of the kind provided for in section 8.

Mr. Gotherman - The Citizens League suggestion of placing the question on the ballot every 20 years is better than allowing this to be done promiscuously. We have some cities that would change every couple of years if you allowed it to happen that often.

Mr. Kramer - But you can change now from mayor-council to city manager by amendment if you want to.

Mr. Gotherman - Yes, but it is more difficult.

It was agreed that there was need for a constitutional amendment to permit the repeal and enactment of a new charter at the same time, as an amendment to the old charter, and it was further agreed that alternate drafts would be prepared for the next meeting setting forth the possibilities of an elected charter review commission whose product would go directly to the voters.

Mr. Gotherman - You could clarify what is an amendment. We would like to see you permit the repeal and re-enactment and the grouping of amendments. If you say it correctly, it really won't make any difference when the amendments become so extensive as to constitute a new charter.

Mr. Kramer - It does make a difference if you abandon altogether the idea that people should not be required to vote separately on disparate amendments. Should they be required to accept some restrictions on zoning to get the change in the form of government they want?

Mr. Gotherman - That language about one amendment is not in the municipal section, but the restriction seems to apply anyway, at least in the minds of council. We think the Constitution should negate that issue and allow a revised charter to be voted on whether it is grouped amendments or repeal and re-enactment. With one vote.

Mr. Speck - I think you should permit one vote on the whole package. Otherwise, when you start cleaning up on a piecemeal basis, I think it's almost impossible. Politically, you often have to make some compromises. And I think that is the only way to get the things you are interested in through.

Mr. Ostrum - As long as the voters understand what they are voting on.

Mr. Speck - When you have so many issues, they become very confusing to the voters. I really don't understand how they got all those things through in 1912.

It was agreed that a new draft would be prepared prior to the next meeting, with alternate language on the points still in doubt.

The committee will meet on Thursday, November 8, beginning at 1:30 p.m. in Columbus.

Ohio Constitutional Revision Commission  
Local Government Committee  
November 3, 1973

#### Summary

Present at the committee meeting on November 3 were committee members Mrs. Orfirer, Chairman, Representatives Fry and Speck, and Messrs. Ostrum, Heminger, and Carson. Also participating in the discussion were Mr. Gotherman, Ohio Municipal League, and Dr. Frederick Stocker, Professor of Economics and Public Administration at Ohio State University.

Dr. Stocker had been invited to give the committee an overview of local government structure and services in order to initiate the discussion of home rule and intergovernmental relations.

Dr. Stocker began with a description of the range of goods and services which people need or desire, and the level at which decisions regarding those goods and services are, or can be, or should be made. For example, he said, a person who wishes to repaper a bathroom wall makes the selection of paper himself, and makes his own arrangements for having the room papered. At the other extreme national defense is a concern of the entire nation. No individual is responsible for defending himself against foreign enemies, nor is any level of government between the individual and the national government. Dr. Stocker discussed goods and services as containing "negative externalities", that is, being entirely internal to the person or group making the decision and having no effects on persons outside that group, or as containing "positive externalities", that is, containing "spillovers" or effects which go beyond the person or group making the decision.

With respect to goods and services generally provided by governments, he noted that police and fire protection and water supply, at least some aspects of all three of these services, can adequately be supplied by small municipalities or neighborhoods. He indicated that the best arrangement is to permit local communities to do what they want to do, as long as they can pay for it, and as long as there are no spillovers into other communities. Following this theory, he said that he felt that water fluoridation was such a decision that could be left to local decision unless it is demonstrated that there are health problem spillovers that make it necessary for the decision to be made by a larger community, such as the state.

He noted that political subdivision boundaries are usually drawn, initially, in order to internalize the benefits of a substantial number of services while, at the same time, providing a general form of government which is accountable to the people who elect the officials. However, he said, such boundaries tend to obsolesce and are difficult to change, and therefore there is need for flexibility in the arrangements for providing goods and services on a local level.

Several methods exist for providing such flexibility. The service areas themselves can be changed through annexation of territory, consolidation or merger, or interlocal contracts. Functions and responsibilities can be shifted from one level of government to another. In addition, there is need to allow for substantive powers in sublocal units, on the level of neighborhoods. Some zoning decisions, for example, might be left to units which are smaller than the municipality but within the municipality.

Functions should be shifted to the state when the benefits (or disadvantages) which flow from the particular service become so large that they can no longer be effectively regulated or provided at a local level.

Education is an example of a service which is highly regulated by the state because the benefits or disadvantages from purely local control are not locally confined.

In discussing the fiscal aspects of providing services by government, Dr. Stocker noted that the need for the service and the ability to pay for it sometimes do not coincide within the boundaries of the subdivision set up to provide that service, and then the state or some other governmental unit must step in. The problem with the poor, he noted, is that they have money neither for private nor for public goods and services, and cannot, therefore, levy taxes on themselves sufficient to provide the necessary public services. Moreover, a low level of public services in one unit of government has adverse spillovers on the rest of the society. Therefore, if the state mandates a certain level of services, it must be accompanied with matching funds, taking into account the fiscal capacity of the individual units of government which are to provide the services. Provision of money from the state or federal government may be in the form of grants or individual payments to individuals, but must have the effect of providing equality among rich and poor communities with respect to the minimum level of services which is mandated.

In his opinion, it is not necessary to provide a tax base which is at all times large enough to enable the collection of sufficient moneys from taxation to provide the minimum necessary services. Indeed, he feels that this may not even be desirable. He feels that it is appropriate for there to be greater variation among local units that would be afforded by such a system, and there the maximum amount of option and flexibility should be maintained locally. Therefore, although some functions must be moved to a regional or state level, he believes that many things should be kept locally even though some equalization is necessary because of the inability of some local units to provide sufficient money themselves.

In summary, he noted three things which should be kept in mind in devising local government structures which can provide the necessary services to citizens: local control of the decision-making, insofar as possible; efficiencies of scale where they exist; and fiscal capacity.

The committee then turned to a review of the outline of discussion on home rule which had been provided. The first question raised by the outline was whether the state has sufficient power, under present interpretations of the home rule provisions of the Constitution, to enact laws to solve urban problems. Specific areas mentioned were zoning, land use, and planning; transportation; crime and law enforcement; housing; pollution; water supply; waste disposal; welfare, recreation, parks and open space; economic development and job opportunities; and health. Except in the field of transportation, where there is some doubt about the ability of the General Assembly to confer the power of eminent domain on a transportation authority to be exercised against municipal incorporation property, the discussion did not reveal any substantial problems in any of these areas.

The next point on the outline raised the question whether home rule provisions should not be altered, even though they may not impede state power, in order to make it clear that the General Assembly has paramount power in order to avoid lawsuits on the questions of whether a particular power is one of local self-government, or whether a particular ordinance conflicts with state law in some area of police power. The outline noted that this could be done by making the action of the General Assembly final, as is done in the Illinois constitution, upon the agreement of 60% of both houses. The burden of determining whether something is a matter of local self-government or not would be shifted from the courts to the legislature.



After some discussion, the staff was asked to review all the cases which have involved an interpretation of section 3 of Article XVIII to ascertain which were related to interpreting "local self-government" or whether a particular ordinance conflicted with state law in order to determine how great the burden has been on the courts, and whether it would be desirable, in the future, to shift this burden to the legislature. A request was also made to draft some language suitable to clarify the local powers.

The next suggestion on the outline was that, even though the state is not prevented by home rule from taking necessary actions, should the Constitution be altered to make particular presently shared state-local functions, particular ones exclusively the duty of the state. Transportation is one such suggested function.

Dr. Stocker - When you say state take it over, does that mean that there would be no leeway for local add-ons or variations--that everything would have to be done by state agency, by state law?

Mrs. Eriksson - Transportation is partly now, of course, a state function but nevertheless local communities do provide for local streets, etc. I was thinking more about mass transportation, maybe rail transit, and making a provision for state mass transportation just as we have for state highways.

Dr. Stocker - That wouldn't be exclusively the duty and responsibility of the state?

Mrs. Eriksson - I think it would depend on how the legislature conceived the need of the people of the state.

Mr. Heminger - Maybe the General Assembly would just say that municipalities must provide mass transit systems.

There was discussion about whether the General Assembly should mandate units of local government to provide services without assisting them financially. It was noted that if, for example, transportation were made a state function, it could be provided by the state legislature providing for state operation of part of the system, as it presently provides for state highways, and local operation of part of the system. Similar provisions could be made for a mass transportation system.

It was noted that the Ohio Constitution presently places a responsibility for education on the state, as well as for maintaining institutions for the insane, blind, and deaf and dumb.

Dr. Stocker - I think Ann is raising the question as to whether the Constitution ought to mandate the state to get involved, maybe not exclusively, but involved in some way, in certain functions. What puzzles me is, is there some reason to think that the people would be more likely to mandate the state to get involved in something than there is to think that the legislature would move into that area through legislation if they have the power to do so? If the state ought to assume the entire and total responsibility for a function--I think welfare is the clearest case--and even that would be a mistake if to do so would deny a county the right to add on a levy if they wanted to.

Mrs. Eriksson - At the New York constitutional convention they debated the welfare question and I don't know that the question of denying local government the power

to do additional things was as central as the question of trying to force the state to do something.

Dr. Stocker - The situation is quite different in New York. The Illinois situation was different on this other matter. In New York the responsibility for welfare financing still resides, I believe, at the local level. New York City carries its own and that's what they were probably speaking to. I don't think that's relevant to Ohio. Speaking in abstract and conceptual terms I think the only basis on which you could rationalize making something exclusively a state responsibility with no opportunity for local variance is if we were to argue that there is no part of that activity that is purely local. Therefore we cannot permit any local government to do something different or additional because the benefits are not purely local. It's entirely statewide in its scope. That's a very difficult position to maintain.

Mrs. Orfirer - It seems to me that this hinges around the word "exclusively" which is in here, which makes a whole different argument out of it than saying should the state provide for the function because it is so essential to the state as a whole. I think we may be talking about two different things.

Mrs. Eriksson - My thought in saying exclusively was that in fact if it's going to become a responsibility and duty of the state, now the state may decide to exercise it by still permitting some local variation. I didn't really mean exclusively in the sense that the state would have to do everything to do with that function.

Mrs. Orfirer - Let's discuss it without the word exclusively, and see whether there is any area that just is so important that it should be mandated in the Constitution that the state take over the responsibility for it.

Mr. Gotherman - Everybody knows the state has to get involved in education and transportation. Is the province of the Constitution to develop a relationship between cities and regions? A lot of factors have to be taken into account, how much money they have, etc. This discussion is really boiling down as to whether or not the state should be able to regulate municipal affairs or county affairs where they are really not of any importance except to the local area. I think it is fairly clear that they may do that already. On mass transportation, in Cincinnati it goes from the border of Cincinnati to the border of Cincinnati. Why should the state regulate that system?

Mrs. Eriksson - If, in fact, however, there are persons who are not served by a mass transit system but who should be, perhaps that is a public concern of somebody's, and I think that this discussion turns on the fact that nobody is perhaps providing some services which are necessary.

Mr. Fry - I think in this matter of education there's too much telling the local school board what it must not do. I'd like to go the other way. I think we should just come up with a general statement that would be applicable. You talk about the reformers that want to get the state into areas like welfare and education and transportation. You're really not interested in whether it's the state or local government. You just want something to happen in those particular areas where they felt something should be done.

Mrs. Orfirer - Isn't this a matter of degree? I don't think that we want to see in the Constitution something that spells out the officials involved in rapid transit

or what the fares should be or some of the details of it. What it is reasonable in my mind to talk about is should there be something that states that the state is responsible for seeing that mass transportation is available to all people of the state. Assuming that mass transportation is a good which should be provided to all people of the state and that saying this in the Constitution does not mean that the state would have the power to regulate how it works but only if the local community doesn't provide it then it's up to the state to see that it is provided by somebody.

Mr. Carson - It's just to say that we think there are areas important enough that the state must deal with. It doesn't mean that the state would tell the City of Cincinnati how to regulate its transit system.

Mrs. Orfirer - I think that if we were to attempt to write up something that would place the responsibility on the state that we would have to be very careful to write a limitation on the powers, that they cannot get into these areas of local regulation.

Mr. Fry - It may well be that when we pass the school foundation bill that we say in order to get the money you have to do certain things.

Mr. Gotherman - The reason why the General Assembly can tell school districts what to do is because the Constitution says that education is a responsibility of the state. I think that's what the Constitution means. It would be the same thing as transportation. It wouldn't make any sense to have a constitutional provision that deals with different governmental relationships differently depending on what relationships you're talking about. Presently, it's clear that the state couldn't tell the city how to design the layout of its streets. If you had a constitutional provision on transportation similar to the one on education it seems clear the import would be just that.

Mrs. Eriksson - It's possible that the General Assembly would look only to areas of need and still permit local discretion

The staff was requested to draft a provision for transportation for discussion purposes.

Mrs. Orfirer - At the next meeting we are going to take a few minutes to finish up the municipal charter provisions. There has been some redrafting here--one or two points that we will need your opinion on, and the rest of it Gene and John have written together and redrafted to provide for the decisions at the last meeting. Then we'll pick up this discussion where we left off. The next meeting will be in Cleveland, Monday, November 26. The meeting after that will be in Columbus on December 13.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
November 26, 1973

### Summary

Present at the meeting were Linda Orfirer, Chairman, Dean Ostrum, Rep. Anthony Russo, and from the staff, Gene Kramer.

Mrs. Orfirer noted that Gene Kramer had met with John Gotherman, and that there were just a few things that remain to be worked out in Sections 8 and 9, municipal charters.

Mrs. Orfirer: A minor change in Section 8 from 18 months to 19 months as the time a charter commission has to frame a charter. It was changed from one year to 18 months and from 18 months to 19 months in order to extend the time and to eliminate the existing problem of elections being slightly less than 1 year or 18 months apart.

Mr. Kramer: If all the primaries were changed to September, you are really talking about 25 months. Nineteen months allows a year and a half for the charter commission's work and would allow for submission at a special election on the first Tuesday after the first Monday in May.

Mrs. Orfirer: Is this going to be obsolete before we begin?

Mr. Kramer: No, I don't think it would render it obsolete. It's just giving them a longer period of time than they now have.

Mrs. Orfirer: I can't see where there would be any sense in extending it any further because then you're back to a regular election.

Mr. Kramer: That's right. You may remember the discussion on November 4 when John Gotherman was here about the possibility of a relatively short period of time for a charter commission because they are elected in November, it's usually the first of the year before they are organized, and they have to complete most of their work by about June in order to make the November election, and most of their work is very hurried.

Mrs. Orfirer: Next, it says "The charter commission shall cause to be mailed or otherwise distributed a copy of the proposed charter." This could mean that they can either do it themselves or have somebody else do it.

Rep. Russo: Does this necessarily mean that anyone else can help with the distribution?

Mr. Kramer: Yes, this is parallel to the county provision which would allow door-to-door distribution if it were feasible. In some of the smaller villages it might be. And perhaps some of the smaller cities can do it that way.

Rep. Russo: How about by newspaper advertising?

Mr. Kramer: No. It requires a copy of the charter itself be distributed, which strictly precludes newspaper advertising, and our Section 9 was originally amended to allow for newspaper advertising only for amendments. At least in county and municipal charters, the people should have a copy of the charter.

Rep. Russo: One of the things we were discussing is how expensive it is to distribute amendments to the constitution.

Mr. Kramer: It involves a lot of expense even to print it in a newspaper.

Mr. Ostrum: Could you, under this language "or otherwise distributed" make copies available at certain places, for example, libraries?

Mr. Kramer: The copy must be given to each elector, as far as is reasonably possible.

Mr. Ostrum: Perhaps say, 'shall be available to...', just to make sure that it's accessible to whoever wants it.

Rep. Russo: In many instances, it's very difficult to send a charter out in its original form. Perhaps the wording of the sentence ought to be changed so that the charter is not required to be distributed in the same way as a constitutional amendment, because the cost is just so much greater.

Mr. Kramer: It gives everyone an opportunity to have one. There's a certain amount of public interest. I'm not sure that anyone who was reasonably intelligent can't read a charter and understand, at least basically, the form of government established, and the restrictions on powers. I think the whole history of the constitutional provisions for charters has been based on the assumption that there are intelligent voters, and at least people should be given the opportunity to exercise their vote intelligently. They say that a large percentage of people will throw these things away and won't look at them, that therefore we won't require that they be sent to everybody, but that could be penalizing those who are interested citizens. Moving away from this would be a fairly drastic change.

Mr. Ostrum: Then you'd really have to depend on the League of Women Voters, citizens' groups.

Mr. Kramer: It seems to me, also, on that point, there is a certain amount of notice that due process requires, and to the extent that you make every effort to include every elector, you've certainly satisfied it. It's certainly a way of countering the possibility of challenges on that ground.

Mrs. Orfirer: Turning to the questions of filling vacancies and organization, there are two options. One would provide that the General Assembly can pass laws to provide for reorganization procedures. This is what we discussed at most of the last two meetings, and this is something that the Ohio Municipal League is very strongly opposed to. This would be the opening wedge, in their opinion, to legislative involvement in the charter process. The second version provides that the charter commission would provide for the rules of its reorganization, and they could do this by majority vote of the members of its commission, leaving it in the hands of the commission itself.

Mr. Kramer: Under the provision that's already been approved for county charters, the General Assembly would provide by general law the procedure for filling vacancies. The General Assembly itself wouldn't do it. The General Assembly is prohibited by the constitution from making any appointments. They can just provide the method of appointing. Presently, with municipal charter commissions, there's no provision for filling vacancies on the commission. If you have a

vacancy, you just operate with that vacancy.

Mrs. Orfirer: Do they make their own rules of procedure?

Mr. Kramer: Now, yes.

Mrs. Orfirer: There may be arguments on both sides, and I'm sure there are, I just personally don't feel that it's that important to impose it on them.

Mr. Kramer: I think one thing to keep in mind is that there have been relatively few procedural problems in anything that a charter commission does because there are very few procedural requirements. All that a charter commission theoretically has to do is to meet one time and by majority vote their charter. They don't have to have any meetings or do anything else. Now of course they do more than that, but I think it's important to avoid having more procedural requirements than there already are, which are not really essential to doing their work and which only serve to provide the ability to challenge it on procedural grounds.

Mrs. Orfirer: Turning now to section 9. The first item is: "Proposed amendments to a charter may also be submitted to the electors of the municipality in the manner provided in this section, by or at the direction of any authority as provided in such charter." This would provide that the charter, itself, if it wished to, could provide for a commission or any other way, to place charter amendments directly on the ballot without council action. We had several people talk to us about this. One letter dates back to October 20, 1971 from John Duffey. "I received a letter from Mrs. Francis A. Wall with respect to an amendment to Article XVIII, Section 9 of the Constitution relating to charter amendments. I do firmly believe that the charter amendment provisions of the Constitution need a study and review. At present, apparently ministerial actions of City Council in referring a matter for vote of the people as an amendment to the charter can lead to a total defeat of an opportunity of the people to vote. It would seem to me that this is a perversion of the intent of the 1911 constitutional provision. Mrs. Wall's particular interest appears to be in a charter provision which requires the submission of a special committee's work on a periodic basis. This would appear to be in conflict with the provisions of the Constitution as to the manner in which a charter is to be amended. Still, the point that she makes as to the right to have charter provisions and amendments submitted to the people without councilmatic interference appears an appropriate thing to consider."

There is also a statement from the Citizens League of Cleveland. "When the Citizens League wrote the municipal home rule amendment to the constitution in 1912, it was our intention that, after the first charter was adopted, additional charter commissions could be convened as the years went by, in the same way and with the same powers as the original charter commission. The courts have interpreted the language different than we meant it and we have been stuck with no effective way to revise charters for all these 60 years.

"The plethora of charter revision advisory commissions that have sprung up all over the place in recent years is ample evidence that the people want and should have a crack at charter revision from time to time. However, charter revision advisory commissions do not meet the need. In the first place they are appointed by the mayor or council instead of being elected by the people. In the second place, they can only recommend and the council decides if the proposals will be on the ballot.



"This year, the council of Cleveland Heights kept faith with its citizens revision advisory commission and placed all of its recommendations on the ballot. But this was the exception. In several other municipalities, the councils refused to put parts or all of the recommendations of their revision commissions on the ballot. The right of the people to vote on the questions was thwarted.

"Several years ago, the Cleveland council appointed a citizens revision commission and it came up with some 13 or 14 recommended amendments to the charter. The council put all of them on, EXCEPT the recommendation that the size of the council be reduced. In addition, the council placed a couple of their own pets on the ballot that had not been recommended by the commission and tried to shill the voters into thinking they were recommended by the advisory commission." It then went on to say that the home rule article should be amended to require the question of whether it should be on the ballot every 20 years.

Mr. Kramer: In conjunction with considering this, there is also the provision on the next page for giving an elected commission this power, and this is revised language.

Mrs. Orfirer: What we've done is to provide for a commission to be chosen after the municipality already has its charter.

Mr. Kramer: And this language is slightly different from the language that you had previously. It was added to it the provision that they could submit amendments or a newly revised charter.

Mrs. Orfirer: Is a revised charter a total amendment?

Mr. Kramer: It would be voted on as a single question, where amendments would relate to single purposes. But they would have the authority to revise the charter and provide for a single vote on the entire package or revision. They may submit one or more amendments or a new or revised charter. This is what the commission calls a revised charter, and they put it on the ballot, it would be a single question.

Mrs. Orfirer: That's just implied.

Rep. Russo: That means you've got to buy all 15 of the package, right?

Mr. Kramer: Right. I think upon the adoption of an original charter or an original constitution, there's no other way to do it than to take it as a package. It has to be a unified document. And, of course, the court did hold that constitutional amendments have to relate to a single purpose. The only major case dealing with amendments to municipal charters was a case involving a series of changes in the Cleveland charter which the court found to be a single amendment because they were related to a single purpose, so changing the form of government, providing for a proportional representation, seems to be clearly implied in the court's opinion that there is a single purpose for an amendment. There's no language in the constitution now explicitly requiring that, but it does refer to submission of an amendment, and I think when we use the term "amendment", we speak legislatively. Amendments have to be germane to the bill and they have to relate to a single purpose. At least with regard to state legislation.

Mrs. Orfirer: Not the congress.

Mr. Kramer: Right. Congress is not similarly constrained. The provision in the first page here would be the same as the provision that's in the county recommendation, that when more than one amendment, which shall relate to only one subject but may affect or include more than one section or part of a charter, are submitted at the same time, they should be submitted so that the electors shall vote on each separately. This would be the requirement as to amendments which, of course, would be submitted directly by the council or pursuant to a petition. This section providing for a commission to submit a new or revised charter would provide a procedural difference. Only an elected charter commission can combine in the same question a number of unrelated amendments and put them on as a revision. You wouldn't be able, under this, to have it done by the council or pursuant to a petition. These are not really inconsistent alternatives. They could operate together so that this section's additional sentence with the asterisk would invalidate a lot of existing charter provisions and would permit a charter review commission appointed under a charter to submit amendments directly to the people. It would not allow the same kind of submission or a new or revised charter that an elected charter commission could submit. And this other provision would apply to every municipality having a charter whether or not the charter contained any provision for appointing a charter revision commission, so that this would always be available. The Municipal League is strongly opposed to the provision with the asterisk allowing the by-passing of the council to put amendments directly on the ballot.

Rep. Russo: They could still provide it in the charter. Are they still opposed to the charter providing it?

Mr. Kramer: Right.

Mrs. Orfirer: They are also opposed to a separate vote to each amendment, I guess under any condition.

Mr. Kramer: The main reason for opposition by the Municipal League to this kind of provision is that there is a tendency for a commission like this to justify its existence by putting on a large number of amendments which may not be very meaningful. The council serves a meaningful function in weeding these out, and determining which ones are really useful, and they may be more conscious of the cost of elections.

Mrs. Orfirer: Why don't we put in something to the effect that instead of providing for direct submission, say that a charter commission may place amendments on the ballot unless some kind of extraordinary majority of council objects? To take care of this possibility of when something fairly outrageous is proposed. Supposing you said that a 60% majority of the municipal council could keep it off the ballot.

Rep. Russo: First of all, they couldn't include this in the charter in the first place - the right of a charter commission to submit charter amendments directly to the people.

Mr. Kramer: No, a charter can't presently do that although many of them do...

Rep. Russo: Unless we provide for it by adding this additional language.

Mr. Kramer: Many of them presently purport to require the council to put on the ballot proposed amendments suggested by charter revision.

Rep. Russo: But council can either ignore it or change it. Or it can act on it.

Mrs. Orfirer: The petition method is mighty rough to go through again after you've gone through the whole bit with the commission.

Mr. Kramer: Well, the commission, of course, is appointed either by the council, or by the mayor so it would be a case of people not being satisfied with council action.

Mrs. Orfirer: I am persuaded by some of the arguments I've heard that some remedy is needed.

Mr. Ostrum: Referring to the revision you just handed out, it starts out "There may be submitted to the electors of any municipality having a charter the question 'shall a commission...' How does this question get submitted to the electors?"

Mr. Kramer: It would be either through a vote of two-thirds of the municipal legislative authority, or a petition of 6%.

Mr. Ostrum: Where does it say that?

Mr. Kramer: "In the manner provided in Section 8 as to the question of choosing a charter commission." It's a shortened reference to incorporate that procedure.

Mrs. Orfirer: Now that can provide for either an elected or an appointed commission?

Mr. Kramer: No. This would provide for an elected commission.

Mrs. Orfirer: "Shall a commission be chosen...?"

Mr. Kramer: That's a question that goes on the ballot.

Mrs. Orfirer: I don't know why any commission that is elected by the people should not have the right to put the results of their work on the ballot.

Mr. Kramer: That's what this would provide.

Rep. Russo: Well I'm from a legislative body and I could argue against that.

Mr. Kramer: This commission would have the same sort of status that the original charter commission has because it is directly elected by the people as distinguished from one that is appointed by public officials.

Rep. Russo: An eleven member commission could much more easily be handled than a 33 member council. It could really come up with some changes that are not necessarily in the best interests of the city.

Mrs. Orfirer: Why would city council place this on the ballot? Why would 2/3 of the council choose to put this question on the ballot, to have an elected commission which is empowered to by-pass it when they can use an appointed advisory commission which they don't have to listen to if they don't want to?

Mr. Kramer: This provision with the asterisk would not necessarily involve any action by the council. If the charter so provided, it could authorize the sub-

mission without council action. The kind of dichotomy you're setting up is between this provision, and the existing situation. And if you ask why would a council do it, I guess just for the same reason that 2/3 of the council would put in the ballot the question of electing an original charter commission, operating under the statutory form. They come to the conclusion that their constituents feel that they should examine the question of the charter.

Mr. Ostrum: Assuming that council is satisfied and they are not going to do it, this provides that 6% of the electors can petition to get it on the ballot. That's the more likely thing that would happen.

Mr. Kramer: This is a procedure that I think was originally established in the constitution to provide for a broad-based citizen representative commission. The size of it, the way it's elected, is intended, as far as possible, to provide for a group which is not likely to be representing only a single interest. It's not a very convenient or useful device for somebody that's trying to accomplish a particular change, because a great many people can run for those 15 slots and very few successful attempts that I have seen where you can elect the whole slate of people who represent only a single viewpoint. So that this is quite a bit different from the existing amendment process. Putting single amendments on for particular purposes would not be the objective. This would offer genuine review and consideration as a whole new charter.

Mr. Ostrum: Why should it not be just as easy to revise and get complete revision as it was to face the question should we elect a charter commission in the first place?

Mr. Kramer: There really is a difficulty now in attempting to provide for the complete revision of a charter. There's not simple way to provide for a new charter.

Mrs. Orfirer: Are we all in agreement about number 2 - 'there may be submitted to the electors of any municipality the question fo electing a commission to revise the charter'? Gene, is there any question here about when it's new or revised and when it's a lot of amendments?

Rep. Russo: That would not be a lot of amendments once you elect a charter revision commission, because once you elect a commission to revise the charter, then whatever they submit will be one amendment.

Mr. Kramer: They could submit one or more amendments to the existing charter. Whatever they do, if they say that this is a new or revised charter, it will go on as a single project.

Mrs. Orfirer: Let me make sure I understand you. They can submit three amendments for separate votes?

Mr. Kramer: Correct.

Mrs. Orfirer: Or they can submit three amendments and say that this is a revised charter?

Mr. Kramer: Right, because I think it's virtually impossible to try to write any distinction between the two things.

Mrs. Orfirer: Where are we saying that it's up to them which it is? What happens if the court comes in and says it isn't?

Mr. Ostrum: The question that the people voted on is: shall the charter be revised? It doesn't say anything about amended. It just says revised.

Mrs. Orfirer: Maybe we have to put 'be chosen to amend or revise'.

Mr. Kramer: Yes.

Mrs. Orfirer: But now, supposing that they say it's an amendment or it's a revision, and the court comes in and says it's not a substantial enough number to be a revision.

Rep. Russo: I think we should change the wording where it says one or more amendments...strike that out of there, if you are right about saying that we can't distinguish between amendment and revision.

Mr. Kramer: Those elected may decide that the existing charter is adequate without any changes, or they may want to propose alternates which is sometimes done, and they may be inconsistent alternates, and the one that receives the highest vote not less than a majority would prevail. If you limit them to a new or revised charter that would have very few amendments but it would not fall into the same category.

Mr. Ostrum: How do you amend it to get maximum clarity?

Mrs. Orfirer: "amend or revise"

Mr. Kramer: I think the way we have it now.

Mrs. Orfirer: But what about my question? Do you just have to leave it to the courts?

Mr. Kramer: I think there is a possibility of what you suggest happening, but the only way to avoid that is to somehow attempt to define the difference. I think that the courts will attempt to define the difference, and the difference does not necessarily have to contain any specified number of changes.

Mrs. Orfirer: I think we ought to be clear in our intent here because I think that it's entirely possible that the court may someday go back to the minutes of this commission to find out about what we've intended. We should say that we feel that it should be the prerogative of the charter commission to make the decision as to whether the amendments are substantial enough to constitute a revision.

Rep. Russo: You can't just go out and elect a charter commission. You have to say, let's go out and elect a charter commission because we need x,y,z changes. You've got to have a platform that you're getting up there with.

Mr. Kramer: That may be true, but the process of electing a charter commission really militates against accomplishing any specific purpose by doing it, unless you are able to elect people who are running on a platform like yours. It's not too often that this can happen.

There was agreement on the provision for an elected commission to amend or revise.

Mrs. Orfirer: Now go back to an appointed commission. If we didn't include this language would we still have appointed commissions?

Mr. Kramer: As long as the charter provides for it. It would just be the existing situation. They would be responsible to the council.

Mrs. Orfirer: Would municipal councils use the method of elected charter commissions more often?

Mr. Kramer: No. I tend to think it would be the other way. If the charter provided for the council to appoint the review commission and if that commission's proposal had to go on the ballot, there are councilmen who would want to appoint people they have trained in advance who will recommend the kind of changes the council would want. If it were a matter of control over the ballot, they would probably have more control over an appointed commission, than they would over this independently elected commission.

Mrs. Orfirer: This would also permit the charter to provide for an elected commission.

Mr. Ostrum: Supposing the charter itself provided the method of change would be an elected commission, but council could also appoint a commission but it would be advisory only. Which would prevail? Do we need stronger language to make it clear that notwithstanding anything else, a commission could still be elected? To eliminate confusion.

Mr. Kramer: The provision you just agreed to would apply to every charter, no matter what the charter says.

Rep. Russo: Why provide for it at all if it can be provided in the charter?

Mr. Kramer: It would be possible to provide in the charter for an elected review commission or one appointed solely by the mayor rather than by council, or one appointed by council, there are a number of ways you can do it.

Mr. Ostrum: All you are trying to do here is eliminating the question of the legality of that charter provision, whatever it is.

Mr. Kramer: All they can presently say is that the procedure shall be as provided in the constitution - by 2/3 of the council or by petition.

Mrs. Orfirer: This would leave it open for a charter if it wishes to provide for a review commission.

Mr. Kramer: An argument that can be made for this provision is that many charters do contain this type of provision and it seems to reflect a strong feeling that this is a good way to provide for charter review.

Mr. Ostrum: Would Mr. Gotherman favor this?

Mr. Kramer: No. Review commissions sometimes tend to feel they have to justify their existence by putting on the ballot many changes which may have merit but



really are not of sufficient weight to go through an election and the feeling of the League is that the council has more experience and that they know what changes should be made. They would like just to retain what we have now, which is for strictly advisory commissions.

Mrs. Orfirer: This would permit going directly to the people with amendments. This makes it more flexible.

Mr. Kramer: "Authority" could mean a review commission.

Rep. Russo: If the charter provides for a review commission, either elected or appointed, once that comes about, does this say that that authority has the right to by-pass the council?

Mr. Kramer: The words "in the manner provided in this section" refer to the method of submitting proposed amendments which can be submitted by or at the direction of any authority provided in the charter. "Authority" here means review commission. It is "as provided" in the charter - relates to a method or procedure. You would have to look to the charter.

Mrs. Orfirer: "In the manner provided in this section" refers to the manner of submission of the amendments.

Mr. Kramer: Assuming that this section is approved, the intention is that it would only be as the charter provides. It is not intended to mean that any body provided for in the charter would have authority to place the question on the ballot; only if that was so provided in the charter.

Mrs. Orfirer: Instead of saying directly in the constitution that a charter review commission's work would go directly to the people, we are saying that the charter may provide that. If that is the wish of that particular municipality, so be it, it is not being mandated in the constitution.

Mr. Ostrum: We have already provided a method by which a commission can be elected and get directly to the people. Do we need that? Couldn't you have a situation where the charter might provide to go directly to the people without first going through council?

Mr. Kramer: Many charters do provide for that, but the constitution presently provides only 2 methods for amending a charter - by 2/3 vote of council to the people and the other is council pursuant to a petition. The constitution says nothing about a charter review commission. So it has been held that there are only those two constitutional methods.

Mrs. Orfirer: Council can appoint a recommending body of its own; what we are providing is a way through the constitution for the people to elect a commission.

Mr. Kramer: A recent article in National Civic Review is about an initiative petition in Minneapolis on which only 16% of the voters voted and voted 3 to 1 to place a spending limit of \$15,000,000 for any project. It was aimed at the domed stadium which many feel would not be good, but the city fathers feel this amendment will cripple the city and hinder future development, by the action of a small minority of voters. We had a similar situation in Toledo and it took another charter amendment to undo the damage done by the first one because it brought the city to a standstill.

The committee voted to eliminate the provision under discussion.

Mr. Kramer: Shall we consider the question of single purpose amendments next?

Mrs. Orfirer: In section 9, where it says "When more than one amendment which shall relate to more than one subject."

Mr. Kramer: This would be applicable in any case where amendments are proposed. It would be possible under this to submit a very substantial change as a single amendment - to change, for example, from a mayor-council to a city manager form of government by one amendment because although the changes are extensive they would all be related to one subject. You could not put on the ballot for one vote two unrelated questions - one, for example, having to do with the term of office of the mayor and one which might be a restriction on council's ability to levy an income tax- entirely separate questions. Under this language you clearly could not submit them as a single question. To permit multipurpose amendments would be inconsistent with the constitutional provisions for amending the state constitution and with the county charter provision as to amendments. Bond issues, tax levies all have to be for a single purpose.

Mr. Ostrum suggested taking out the material in parentheses and making it a separate sentence. It would be clearer.

It was agreed that it was a matter of style not substance, but that it would be made two sentences since that seemed clearer. It was suggested that a similar change be made in the county section.

Mr. Ostrum: Lift the language from Article XVI section 1 and add the definition of one amendment. Another suggested change was to keep all one sentence by putting a semicolon and saying "however, an amendment shall relate to only one subject..." It was generally agreed that either approach would be better than the single sentence.

Mrs. Orfirer: Now we will talk about repeals. "A charter may be repealed in the manner provided in this section for the amendment of a charter" - that means 2/3 of the council or 6% of the people by petition or by a review commission, since we have now provided for a review commission.

Rep. Russo: Has anyone ever tried to repeal a charter?

Mr. Kramer: Yes, there have been a few attempts. An attempt to amend a charter by abolishing it. It was approved by the Supreme Court, but they had to make up the doctrine out of the whole cloth because it is not provided for anywhere.

Mrs. Orfirer: "by submission to the electors of the municipality of the question "Shall the chartes form of government for the (city or village) of...be repealed?" That means that the 3 methods can be used to get the question of repeal on the ballot. Right? "Except that such question shall be submitted at the next general election occuring not less than 180 days after certification to the election authorities of the ordinance.

Mr. Kramer: This was written in terms of council action or a petition and this language might have to be revised if you want to include the possibility of a charter review commission recommending repeal. This parenthetical language is optional - it is a restriction suggested by the Municipal League so that there

would be a greater time period prior to the election than on other types of amendments - 75 days.

Mr. Ostrum: The word "ordinance" bothers me because it won't always be an ordinance.

Mr. Kramer: We can work out something on that.

Mrs. Orfirer: Isn't there some way of saying it easier than all that? We could drop the parenthetical language, but we should consider whether 75 days is enough time to mount a campaign for or against something as important as repeal. Does the 180 days have to be after certification? Isn't there an easier landmark?

Mr. Kramer: That's the landmark we have been using for other situations. The alternative would be the passage of the ordinance or submission of a petition. But the important time is when the board of elections is apprised that the matter is to go on the ballot.

Mrs. Orfirer: Why not say "after certification to the election authorities"?

Mr. Kramer: Certification of what? You have to certify something.

Mrs. Orfirer: If it comes out of the review commission, what is it? If not an ordinance, what is it?

Mr. Kramer: We can work on the language after you decide whether you want the parenthetical language - to require at least 180 days before the election.

Rep. Russo: 75 days is the minimum time, isn't it? They could always have more time if they get the question certified earlier.

Mr. Kramer: This would just substitute, in effect, 180 for 75. It could be more but it could not be less. Since there is a 75 day period for considering a whole new charter, also, so this would be more time for considering the question of repeal.

Rep. Russo: I prefer to leave it at 75.

Mr. Kramer: It's a concern for stability of the charter; I don't know how important it is. It's a question of a period of time to defend the existing charter, and I don't know what value to place on that. In view of the 75 day provision for the original charter and for amendments, is the question of repeal either so different or so important that it requires more time?

Mrs. Orfirer: Then let's leave it out. It was agreed to take out the 180 days. "If such question is approved by a majority of the electors voting thereon, the charter shall be repealed as of the first day of January next following the next general election for municipal officers and the nomination and election at such general election of the officers who will govern the municipality after the repeal of the charter...." That's very complicated.

Mr. Kramer: We are talking about 2 things - the repeal of the charter the first of January after the general election. Then, when you repeal a charter, you go back to the statutory form of government and you have to have an election for

the mayor and auditor and treasurer and members of council. So even though the charter is still in effect you elect the officers as though you were operating under the statutory form. But there is an exception provided for both of these things. If, following approval of the repeal question, a new charter is adopted, you could provide in the new charter that instead of the existing charter being repealed as of the first day of January, repeal it at a different time, and you can provide a different method of electing officers because you have officers under the charter and not statute.

Mr. Ostrum: Is the provision for repeal even necessary now that we have a provision for revision?

Mr. Kramer: You might have a one-sentence charter saying that the organization and government will be as provided by general law. Until recently, there was a difference in general law in the direct debt limit between cities which had charters and those which did not - those with charters had a 5½% debt limit and those without charters had a 4% debt limit. So a city might adopt a charter such as I have just mentioned just to be a charter city even though they did not change the form of government from the statutory form. That distinction has just been abolished, however.

Mr. Ostrum: But should we spell out in the constitution a method for reverting back to the statutory form rather than having it spelled out by law. Perhaps we should permit the statutes to provide for these details.

Mr. Kramer: That would be inconsistent with the self-executing nature of these constitutional provisions. There's also the danger that the General Assembly might not get around to passing the law, and there would be a gap.

Mr. Ostrum: Why do we need to provide for repeal if the Supreme Court has approved the repeal of a charter?

Mr. Kramer: Its an old case, there seem to have been some political considerations that went into it, and it may not be such good law anymore.

Mr. Ostrum: What did we provide for repeal in the county provisions?

Mr. Kramer: Same way as for amendments, but we do have a provision in the county section for the general assembly to provide for some of these things.

Mr. Ostrum: I would like to keep it as nearly as possible like the county section.

Mr. Kramer: One problem now is the very long lead time necessary before the election of officers since the filing time for the May primary, which is the only one provided by general law, is in February. It might be possible to provide something different by law in this situation where a charter is being repealed and officers must be elected under general law.

Mrs. Orfirer: If such question is approved by a majority of the electors voting thereon, the charter shall be repealed and a subsequent form of government provided by law?

Mr. Kramer: I would want to work on that language. That's the general idea, except as provided by the charter.

Mrs. Orfirer: I raised the possibility that you might have on one ballot the repeal of a charter and a new charter and they would be 2 separate questions.

Mr. Ostrum: If you repealed an old charter and at the same election adopted a new one, you wouldn't have to revert to general law for the form of government.

Mrs. Orfirer: Do you need the exception?

Mr. Kramer: Yes, because subsequent to the repeal you might elect a charter commission and they would propose a new charter and the charter should prevail if adopted over general law. Then you would need a transition to a new charter form of government.

It was agreed that Gene Kramer would work further on the language.

The meeting was adjourned until 1:30 p.m. on December 13 at the Commission office in the Neil House.

Summary

Present at the committee meeting on December 18 were Mrs. Orfirer, Chairman, Committee members Senator Calabrese, Representative Fry, Mr. Carson and Mr. Heminger; staff Mrs. Eriksson, Mrs. Mills of the League of Women Voters, Mrs. Cave of the Ohio Municipal League and Professor Vaubel of Ohio Northern Law School.

Mrs. Orfirer - Sections 8 and 9 of Article XVIII dealing with municipal charters, except for the final page have been reviewed and agreed to. Please look at the last page of Section 9. It deals with repeal of existing charters and election of a charter commission at the same time. Without such a provision, there was a possibility of conflict. If both questions are submitted together, the one with the largest vote would prevail. The second sentence is particularly important: "The question of repeal of an existing charter shall not be submitted to the electors at any time after a commission has been chosen to frame a new or revised charter and before the submission of such new or revised charter to the electors, or within two years following the adoption of a charter or a new or revised charter." This last clause takes into consideration a point that John Gotherman raised, when he stressed the importance of stability of municipal government and not going back and forth between charter and noncharter. This gives the charter a period of two years to prove itself before it can be repealed.

Mr. Heminger - If the charter is repealed, then we're back under state law?

Mrs. Orfirer - Right. And then rather than spelling out in the Constitution all of the steps that have to be taken in election of officers, etc. to go back under the statutes, it would be provided by general law. Since they would be under general law anyway it seemed like a logical step.

Mr. Heminger - There is no provision for repeal at the present time?

Mrs. Orfirer - No.

Mrs. Eriksson - The question of repeal has been tested in the courts, and the Supreme Court has held that you can repeal a charter, but it's an old case and there is substantial doubt as to whether the Court would follow the same reasoning today. Therefore, it seemed best to put something specific in the Constitution about repeal.

Mrs. Orfirer - If no other comments, we will consider sections 8 and 9 agreed to as you have them before you.

It was so agreed.

Mrs. Orfirer - Now, let's move on to material on home rule. You have a page headed "discussion outline." It sets forth three possible approaches to home rule. The first one is the one from the Model Constitution and would limit the home rule powers by the General Assembly. The second would spell out the respective areas of authority-- what's a state concern and what's a local concern and the third one is what we now have. The main question is should the existing provisions be revised to adopt either of the other approaches. You might tie this in with the other papers that were handed out today. We also have three drafts. These were very preliminary drafts drawn up to give you an idea of how these approaches could be written in the Constitution. If you look first at the draft marked "Version B", this would be a very



definite limitation on home rule as it now exists, because municipalities would only have authority to adopt measures for local self-government which do not vary from general law.

Mr. Heminger - Let me ask a general question. We have moved to make it easier to get a county-wide charter. I think that might be desirable. To what extent will this affect the likelihood of county-wide charters? If we give the cities more powers than they now have would it make it easier to encourage county government?

Mrs. Orfirer - I don't think that any of these would broaden the powers under home rule. Version B would limit them. It would make them subject to whatever limitations the General Assembly wanted to put on them. A gives them what they now have but spells out the fact that there is no difference whether the municipality has a charter or doesn't have a charter. By practice now, as I understand it, rather than any spelling out in the Constitution it is just by legal decisions that it has come about that the charter municipalities have a degree more of home rule than noncharter. Am I correct in this?

Mrs. Eriksson - That's correct. The courts have generally said that the powers of local self-government apply to all municipalities but in fact has limited the exercise by saying that state law does govern in certain instances for noncharter municipalities, but not for charter municipalities.

Mrs. Orfirer - But that difference isn't spelled out in the Constitution. What Version A does is say there is no difference. It redefines what's in the Constitution now with or without having adopted a charter. Now what Version C does is to make a differentiation and again it puts noncharter municipalities in a position where they may not be at variance with general laws so that they are limited in the same way that Version B would limit all municipalities.

Mr. Fry - What are the arguments for saying that a municipality shall adopt a charter? Is that they feel they are better able to govern themselves under a charter? If we make a differentiation between those that have adopted a charter and those that have not.

Mrs. Eriksson - Well, I am talking about powers. As far as the structure of government is concerned, if a city does not adopt a charter it has to follow one of the optional forms set up in the Code and it can't vary from it. If the Code says that councilmen are elected for two-year terms, the city cannot change that, unless it has a charter. The advantages of a charter in the form of government are that a charter city can do whatever it wants to as far as the form of government is concerned. It can elect who it wants to, have whatever form it wants, but it's in the powers that the more problems come.

Fry - It seems we have to have legislation involving noncharter cities. I would like the cities to handle for themselves what the term of a mayor shall be or a city treasurer.

Mrs. Eriksson - Of course any city can adopt a charter if they want to make variations from those statutory forms and that is certainly one clear distinction between charter and noncharter cities. Where it becomes fuzzy is in the exercise of the powers of local self-government, which the Constitution gives to all municipal corporations.

Mr. Fry - Just to get it out here on the table, I personally like the idea of giving

strong home rule power to the local governments. I don't enjoy exercising the rights the legislature has in changing some of these things. Just as we like to have as many powers as we can for the state, apart from the federal government, I'd like to see local government given as much power or authority as they can have apart from state government. If you look at the legislation that's passed in the General Assembly having to do with noncharter cities I never felt that we had any greater wisdom or are any more familiar with the problems than the people in the city.

Mrs. Orfirer - How does this tie in in your thinking with the discussion that we had at the last meeting about what is a statewide concern and what is a local concern and where do they conflict? I think the only reason for making this kind of change would be to permit the state to play a stronger role in determining the issues that were broader than one municipality.

Mr. Fry - Are you referring, for example, to something like fluoridation? The cities were told: you don't really know what is best for you, so we'll make this decision in Columbus. For the people who wanted fluoridation this was good, but that decision should, I feel, have been made in the local communities.

Senator Calabrese - We've had a lot of dissension in Mayfield Heights. They had to come to Columbus. Sometimes there is a lot of jealousy in the local communities, not only political.

Mrs. Orfirer - A lot of the overlapping problems were discussed last time, transportation, housing, pollution--this whole list that we went through at that time, and I think the feeling at that time was that we didn't feel that the state was too hampered by the existing provisions, but I wondered whether there were second thoughts on this? We had a general discussion of this with Dr. Stocker who was talking with us and I just wanted to be sure that we do have a consensus, if we do, that we don't feel that we need to limit the powers of municipalities.

Mrs. Eriksson - One of the things that came out at the last meeting was again this old problem that there seemed to be so very many court decisions in Ohio interpreting the constitutional provisions. The thing that has to be interpreted is the expression "local self-government." You can say that measure shall not be at variance with general law but you're still saying that somebody has to decide what's local self-government, and what isn't local self-government. Even if you take Version B, you're saying that municipalities have authority to do certain things for local self-government as are not at variance with general laws but you still have to decide how to categorize various powers or functions. A fourth proposal would be to look at the new Illinois constitutional language which phrases it this way: "Except as limited by this section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety and morals and welfare; to license; to tax; and to incur debt." The limitation is that the General Assembly can override this general power by a 3/5 vote. Now at our last committee meeting, we talked about that and the committee members did not seem to favor that approach necessarily but you might like to consider this general language of grant of power at the beginning. Then if you like the idea of the Fordham approach--which is not to permit variance--you could do that instead of the 3/5 of the legislature. But the general language says "any function pertaining to its government and affairs including but not limited to" so that the grant of the police power is within that general grant. It makes it clear that's not a separate thing. It's within that general grant, "including but not limited to the regulation of the public health,

safety, morals and welfare; to license; to tax; and to incur debt." I offer that as another variation which would spell out to some extent what local self-government is.

Mrs. Orfirer - Then we go on that all these things are providing, they are not at variance, is that correct?

Mrs. Eriksson - The Illinois provision says that the General Assembly may deny or limit the power to tax and any other power or function of the local unit by a 3/5 vote.

Mrs. Orfirer - Which is really very different from what we're talking about. They have the power unless the General Assembly specifically takes it away.

Mr. Fry - I like that approach.

Mrs. Orfirer - It certainly is a compromise between the two points of view. It's not as limiting as saying that they must conform to general law.

Mr. Carson - I'm not aware of what the Fordham approach is, but I haven't been aware, aside from the litigation over the meaning of these sections, that there has been unhappiness over grant of home rule powers that we have had. Are there problems that I'm not aware of?

Mrs. Orfirer - The problems, as I understand them, are in this area of where the state can really step in, what is a statewide prerogative and where they can't act because of home rule.

Mr. Carson - So it's the meaning of the language then rather than interpretation of the words in litigation that results from it?

Mrs. Orfirer - I think it is both. It's not just a matter of words although the words are not making clear what powers belong where. It's never been specifically defined and it's hard to do so. I don't think anybody wants to spell out in the Constitution precisely which specific powers each level of government has. But there's been some ambiguity in terms of what constitutes a power that the state has to step in to some of these areas that really extend beyond the borders of a municipality. It's open to question on some of these problems.

Mr. Carson - The alternative here is to radically restrict, I guess, the Ohio system of local self-government.

Mrs. Orfirer - I suppose you would call it radical. It's a strong restriction, and that is what the Fordham approach is.

Mr. Carson - My real question is is there a need to do that? I'm not just aware of it if there is. And you were asking whether we favor the Fordham approach and I wouldn't be unless there were need for restricting home rule powers.

Mrs. Orfirer - The difficulty is determining what is really a statewide concern.

Mrs. Eriksson - I don't think that anybody has come up with a need to restrict home rule powers in the sense of finding municipalities which, under home rule, are doing things that are detrimental to the public good. The only need that has been demonstrated is the fact that there is a continuing question as to the meaning of it and

what is suitable for legislative action and what is not suitable for legislative action.

Mr. Carson - So your approach is to try to define powers of local self-government to eliminate ambiguity.

Mrs. Orfirer - I know from my reading that there have been a great many cases because all the political scientists are talking about it at great length. Besides the fact that there has had to be litigation about it, has it created a problem in a realistic sense? Does the state have difficulty in asserting itself in some of these areas? Does the legislature never come up against the wall of home rule?

Mrs. Eriksson - Indeed the question does come up, if the legislature has before it any bill which is going to affect municipalities.. But the legislature often is able to resolve the question, if the legislature has gone ahead, as it did in the case of fluoridation, and enacted a law, then the question is whether these laws are going to be upheld by the courts. Home rule may create problems for the legislature and there may be times when the legislature fails to act because of that but it certainly doesn't stop the legislature from acting if the members choose.

Mr. Fry - You can establish a theoretical viewpoint and then you can build your language from there. I get disturbed about organized groups, organized for one purpose or something, coming to Columbus and being able to have legislation enacted which affects a lot of people who, were they organized, would probably not approve of it. I think we should keep the control of these things at a local level. Let's go back to fluoridation (that may not be the best example, we could go with police and fire pensions). In city after city it was submitted to the voters and was opposed. The majority of the voters, right or wrong, said they didn't want to have their water fluoridated. So then this group gets together and comes to Columbus and they pass a law that affects all these cities. We did have an escape clause in there, as I recall, that if the city wanted to get it on the ballot with sufficient signatures, etc. that they could reject it. But unless we have a matter that what one city does affects adjoining municipal areas, such as water pollution, I'd like to keep just as much power as we could in that local government. I think if we can agree on that it would be a lot easier to pick the kind of language that would reflect that.

Mrs. Orfirer - My impression, as we have traveled these months together, is that, yes, we would agree that what affects the ones in the local government should remain there--I don't think we have any dissension about that. The problem is deciding when it affects more people and what to do about it then.

Mr. Fry - Possibly we can work some language out that when we say as are not in conflict with general laws that we mean the general laws that are enacted for the local governments.

Mrs. Orfirer - Is it anywhere spelled out where the General Assembly can step in? Supposing we followed Charlie's suggestion and said that municipalities shall be subject to the limitations or not be at variance with the general laws but the general laws can only be promulgated for those issues that extend beyond one boundary.

Mrs. Eriksson - Are you sure that you want to put it on the basis, though, because many laws which are of statewide concern are enacted for the welfare of the people, but may not actually be intergovernmental in nature. Fluoridation is, maybe, a good example because it is arguable as to whether it's a health regulation of such importance that all people in the state of Ohio should benefit from it or whether it's a

marginal matter. If you had a health matter of great importance for example, that all children should be vaccinated you're trying to eliminate small pox perhaps it shouldn't be left to local government, so I don't think that you want to talk about boundary lines. When you have something that is clearly for the benefit of the people, it shouldn't have to be intergovernmental in nature.

Senator Calabrese - For the general welfare of the general public.

Mrs. Eriksson - The Illinois provision illustrates this--it says "perform any function pertaining to its government and affairs including the power to regulate for the protection" then you make that subject to not being in conflict with general laws which is the way our present Constitution reads. Then you could always rely upon the General Assembly, it seems to me, to do that which is for the general public good, in any of these areas. Whereas, it would leave to the local units their own government and affairs just as long as they did not conflict with-- and I think there you might stick with conflict rather than using the variance language, because if you say it cannot vary from general law then it really means that the local unit cannot have an additional requirement. Whereas if you simply make it a question of conflict it means that the local government can still proceed even if there is a state law as long as their own law does not conflict with it.

Mrs. Orfirer - What you're saying is that even if it is something that the state deems is for the good of the people of Community A and doesn't affect anyone else in the whole state--something that is going on within that one community that is harmful--that the state should have the right to step in to protect the welfare of the people, even though it is restricted to the one community.

Mrs. Eriksson - Yes--or it might be for the good of the people in A, B, C etc. but still not be intergovernmental in nature. It might pertain to the people in every community without necessarily spilling over. You wouldn't want to have to prove that it was going to spill over.

Mr. Carson - I am aware of the path that the Supreme Court of Ohio has laid out in section 3 and section 7, the charter sections. In reading section 3, I would have interpreted it to mean exactly what Illinois has said. Don't you think that was what was originally intended in section 3? The Supreme Court has read in the difference between the powers of local self-government and the police regulations.

Mrs. Eriksson - Yes, I believe that that's probably what the Convention intended.

Mr. Carson - And secondly, do you think they intended a difference between charter cities and noncharter cities?

Mrs. Eriksson - That I don't know. A lot of the political science writing does urge that a distinction be made but I am not at all sure that the drafters of the Ohio amendment intended that there be a distinction. It seems to me that if they had so intended, they certainly would have written it in there, without letting section 3 sit by itself the way it does. My answer to that would have to be that I don't think they intended a distinction between charter and noncharter cities.

Mr. Carson - The final question, The words "including but not limited to" in the Illinois constitution tie the two ends together, and if section 3 were amended just to include those words, we might solve our problems. I'm not sure that the Illinois

definition is any better than ours is.

Mrs. Eriksson - The fact that it ties them all together and doesn't make a distinction between local self-government and the police powers is an improvement I think.

Mrs. Orfirer - I can't see what we have to gain by using the Illinois wording.

Mrs. Eriksson - What we would have to gain would be that in our Constitution there's a definite separation between exercising the powers of local self-government and adopting and enforcing within their limits police powers--which are not in conflict. And it's only the police powers which must not be in conflict. Nolan is pointing out that the essential difference is that in the Illinois version government and affairs includes but is not limited to--in other words, the police powers are definitely part of the powers of local self-government. You don't have a distinction between them. You have defined the powers of local self-government, by giving an example and that's not the case in Ohio. That's why local self-government has to be interpreted all the time because it's really not defined. And you wouldn't have to change the Ohio language if you didn't want to. You would only eliminate changing "and" to "including but not limited to." If you didn't want to change the words themselves.

Mrs. Orfirer - Then you are increasing the powers.

Mrs. Eriksson - In some respects you are increasing them. In other respects you would be limiting because then you would make the whole thing subject to the conflict clause. Which it presently is not. And which is why the distinction between statewide concern and local self-government is so important.

Mrs. Orfirer - I thought what you were doing was removing the local police, sanitary and other regulations from the conflict clause. Now we're putting it all under it.

Mrs. Eriksson - That's right. Making the whole thing subject to the conflict clause.

Mr. Carson - That's exactly what Illinois does--it makes it all subject to the conflict clause.

Mrs. Orfirer - We're back to a very basic decision. Whether you want to place any limitations on the present home rule provisions or not. I definitely agree that if we do it should be conflict rather than variance.

Mrs. Eriksson - There's one other difference in Illinois and that's that the General Assembly can deny the exercise of the power. Under our terminology the General Assembly would have to exercise the power itself, in order to have a conflict.

Mrs. Orfirer - There they don't have to exercise the power.

Mrs. Eriksson - No. They simply deny it, by the 3/5 vote.

Mrs. Orfirer - Professor Vaubel, would you like to comment?

Prof. Vaubel - I could. I think we're really dealing with three or four separate problems, or maybe more than that. One is the scope of the grant in the first place. I think immediately you're going to have to make a division between city power and state power. I don't care how you phrase it. You're going to put it in terms of local self-government, pertaining to the government and affairs of a city or you can



use the term that was rejected in the Convention, "local affairs" which was used in the California Constitution. So you've got the outside circle and I don't see any way of avoiding some method of defining it. If you can come up with a good definition, that's another matter. The other proposition is if you make any internal divisions within that slice, and I think that was Mrs. Eriksson's main point, between local self-government and police power. Being a traditionalist, I can find some reason for retaining what we've got, but it's not quite as large a problem as some of the others except for the fact that it makes a lot of sense to not try to divide that which is not divisible. In other words, shared power, which we have in the police power area. Both the city and the state can operate the police power and I think that's really a plus in our present system. Insofar as local self-government is concerned, it is not shared and at that point it breaks down, but exactly what do we have there? I am sure there has been litigation but basically it's about structure. A few other powers have been involved--eminent domain and off-street parking and a few others, but so far as structure is concerned, I think I can sympathize with the legislator and the local man that maybe the city, charter or not, ought to be able to say how much they are going to pay their local officials, how big their office is going to be, how long they're going to be in there, how to fill a vacancy and so forth. It really doesn't make much difference to the state. The trouble, of course, is once you say that you have to find a dividing line.

The next problem is how much control does the state have within this circle of local self-government. Is it a matter of conflict? Is it a matter of variance? Is it a matter of no control at all in local self-government, if you have a charter? Is it a matter of denial? Is it a matter of preemption? Personally I don't like denial and I don't like preemption and we do have most of our pie in the police power area. Mrs. Eriksson raised the point which is close to my heard--when she says that statewide concern has become so important in Ohio. How are you using the term? What do you mean by it?

Mrs. Eriksson - Statewide concern is whatever the General Assembly does that the Court upholds. Isn't that about the only way you can define it? I don't know any other way to define it except to run down through the areas where the Court has upheld a particular statute.

Dr. Vaubel - I think you would be defining it analagous to the police power, and I really don't think it is necessary to use two different terms. As far as I am concerned the state had complete police power. It can do anything it wants to as long as it is exercising police power. It can even tell the city a few things along the way, sort of indirectly, by exercising its police power so I really don't think there's any need for using statewide concern. What the courts have done is use that term to grab a little bit more than "no conflict" will permit. When they do, that, they leave confusion. Do they mean it throughout the entire area of police regulations or do they mean it outside? Obviously if it's outside of city power entirely, it's clearly statewide concern there shouldn't be any problem. The city shouldn't be there at all. Of course, you have to define that area but if statewide concern is defining that outer area--the governor's salary, his term of office, the legislature possibly streets, courts, education and a much greater debate when it comes to utility regulations--it shouldn't create problems. As far as I am concerned, in all the health matters, the state can do what it pleases. It can pass fluoridation--it can pass regulations at the state level so long as it wants to regulate it. What I have some misgivings about is, are the courts going to use the term "statewide concern" to broaden the "no conflict" concepts, because if the state can come in and say no, you can't do it, or we have somehow preempted it, then the city cannot act.

Denial or preemption, I think, would be very injurious, because it makes exclusive state power in an area where there is mutual interest, and it ought to be a shared power.

Mrs. Eriksson - To that extent, then, wouldn't we improve on the situation then if we made the local self-government come under the "no conflict" clause?

Prof. Vaubel - I wouldn't have any objections.

Mrs. Eriksson - The legislature would have to do something, they could not simply deny.

Mr. Fry - For example, on the matter of licensing plumbers, it's always been a matter of local concern. Now we have a bill to try to make it a unified approach all over the state.

Prof. Vaubel - Regardless of the merits, the state has police power to require a license. They are exercising police power and not just telling the city what to do. Then if the city requires a license and says no you can't act until you get ours, and the state has said yes you can act when you get ours, you have a conflict. If that's what the state wants to do, but they can't step in and say cities can't issue licenses. But you will not prevent any action at all.

Mrs. Orfirer - How will the municipal officials react to this kind of change? Bringing "local self-government" under the "no conflict" clause?

Mrs. Cave - Ohio Municipal League - We prefer to leave Article XVIII, section 3 alone. John Gotherman feels very strongly about that.

Mr. Fry - Notwithstanding that recommendation, I do think that this language from the Illinois Constitution has some merit.

Mr. Carson - It's so new in Illinois that they haven't had any litigation or interpretations. I'm not sure these words add anything to what we've got, except the one big substantive thing and that's "including but not limited to" which ties these two things together and has been an area where I personally think the courts have misconstrued the Constitution over the years, although I may be wrong.

Mr. Fry - Do you think this would clear it up?

Mr. Carson - Yes, but it's a question of whether you want to do it. I think it certainly would be a major change.

Mrs. Orfirer - It would be a change in either direction. Put it all under the conflict clause or all out from under it.

Mrs. Eriksson - You could eliminate the conflict clause. That would really be a change.

Mr. Carson - Under the local self-government portion of section 3, how often would the state actually legislate in areas within the structure with respect to charter cities?

Mrs. Eriksson - I think the area that is fuzzy is where structure ends and powers begin. A good example is whether the state could mandate through civil service laws that the

deputy police chief must be chosen through examination or whether the city charter could provide otherwise. This is the kind of question I think that you get into as far as local self-government is concerned.

Prof. Vaubel - So far as legislation is concerned, there's a lot already on the books. The code of 1902 has never been repealed. At that time the state had complete control. If you put the charter cities under general laws, you put the charter right with it. Cleveland's structure of government would be the statutes, not the charter.

Mrs. Eriksson - You still would have section 7 which provides that any municipality may frame and adopt a charter for its government.

Prof. Vaubel - If you bring in local self-government under the no conflict clause, that would eliminate the need to distinguish between the two. Then that would be the whole ball of wax under general laws and would include the 1902 code. Now on the other hand you might get yourself back out again, phrase it properly, with a charter under section 7. The minute you do that you would have to redefine what local self-government is. In fact, that's where we are. For local self-government, you're under the general laws if you don't have a charter, so you have to go with the term of office the state legislature establishes. The way you get out is through section 7 with a charter.

Mr. Fry - Would Version A take care of this, where you eliminate the necessity of having adopted a charter? Why have a charter?

Prof. Vaubel - There is an answer--distribution of power. And, further limitations than are in the Constitution.

Mrs. Orfirer - Should we differentiate between charter and the noncharter cities? We're discussing powers under the no conflict provision, may not be in conflict with the state laws, not just the police and sanitary regulations but all powers, discussing with them not being in conflict with state laws. Should that apply just to noncharter municipalities? This could be the method of separation of powers between a charter and noncharter municipality.

Mrs. Eriksson - You would also have to know what kind of powers you were going to give charter municipalities.

Mr. Fry - Local Government is local government, whether or not you have a charter.

Mrs. Orfirer - Should there be any advantages for communities that do have charters?

Prof. Vaubel - The courts have said that the noncharter city, in an area of local self-government, cannot vary from the state law. They have the power but they can't vary from the state law, in an area of local self-government, that's the Pettit v. Wagner case. So a noncharter city can't vary from the general laws of local self-government and it cannot conflict with general laws in an area of police regulation. So they're bound by general laws but they can act in the absence of the law. The charter city, on the other hand, prevails over the general law in local self-government and cannot conflict in the case of police powers.

Mrs. Orfirer, Sue, do you agree with this interpretation that the noncharter municipalities are subject to not being at variance with general law?

Prof. Vaubel - I think Mr. Gotherman would not agree.

Mrs. Orfirer - Basically what you're saying is that noncharter municipalities are subject to not being at variance. Do we want to spell it out in the Constitution, or don't we? Because it's really there by adjudication and not in the Constitution. Does this help any?

Mr. Carson - We ought to do what we think is right and the Ohio Municipal League can object before the full Commission, lobby against it in the legislature, and then try to defeat it at the polls. I don't think we should just leave the subject because Mr. Gotherman doesn't support it.

Mrs. Orfirer - I think it's a question of deciding whether you want that spelled out in the Constitution, or whether you are willing to leave it as it is under the court interpretations and figure it will keep on being interpreted that way.

Mr. Fry - I think it should be spelled out in the Constitution. If, for nothing else from the standpoint of the people who use the Constitution. It's a lot easier for an ordinary member of council or a commissioner to read the Constitution and be guided by it than to dig back through a lot of court interpretations. The Constitution should be as clearly stated as possible for the benefit of the people who use it. I don't like the idea of digging back through a lot of court decisions to find out what really is and isn't.

Mrs. Orfirer - As Nolas has pointed out, the important thing is to make the decision as to how it should proceed. We'll begin, at least, with that one statement that noncharter municipalities should be subject to the state law. Is that what we want?

Mr. Fry - Personally, I don't. I think the fact that they don't have a charter should not matter. They should have the same authority except where there is state law, that has a broader application.

Mr. Carson - Can they decide the number of councilmen in a noncharter city?

Mr. Fry - They cannot at this time, no.

Mr. Carson - Would you favor permitting them to adopt their own form of government?

Mrs. Orfirer - Why don't they adopt a charter?

Mrs. Eriksson - Would there be any advantage then to a city adopting a charter, or would it then operate only as Prof. Vaubel suggests to place limitations on the city? If a city can vary its form of government, the pure structure, whether or not it has a charter.

Mr. Fry - Are we interested in encouraging cities to adopt charters?

Mrs. Orfirer - Not necessarily. It depends on the size of the city and whether they feel a need for this. If the statutory form is sufficient for them, why not let it stay? If they have problems that necessitate having a charter, they do choose their own form of government, then we're at the point where I think we have to decide that having made that decision are they entitled to greater powers than those small communities without charters.

Mr. Fry - We have some pretty large communities that don't feel the need for a charter. Canton doesn't have a charter. Parma doesn't have a charter.

Mr. Carson - I guess one form that can be adopted, and I think that's what the framers of home rule powers probably meant, would be that you can have a group of general laws passed such as we now have on the books governing the structure of local government that would apply to all municipalities that don't choose to change it.

Mr. Carson - Unless the municipality decides to make it different you would use the state law. If they decided to change it then they can do it under the home rule powers. The function, then, of the charter would solely be a restriction as I view it. You wouldn't really need a charter unless the people of that community wanted to restrict their city or village council from exercising the power in the way they have done it.

Mrs. Eriksson - Yes. And I think that's what Prof. Vaubel is saying.

Prof. Vaubel - A charter would add the distribution of power which is a form of restriction, setting up departments meeting this or that need where a general statute might not be applicable. The distribution was a function of the charter prior to the Wagner case and until the court informed us that we were teaching the wrong thing. Pettit v. Wagner, about 1960 as I recall, the city charter said promotion to the chief of police must come from the ranks and the state statutes say from the department and this fellow was appointed from another city and brought in as police chief. The question arose as to whether the charter provision as to any policeman could be promoted rather than the statute which said a policeman from the department could be promoted. It did decide the local self-government matter. You could not vary from the state law unless you did have a charter provision.

Mr. Fry - I can understand that law being lobbied through by the Fraternal Order of Police--if we're going to have a chief, we want him to come from our force. But this doesn't necessarily mean that that's best for local government. I'd like to get away from things like this. You may just be perpetuating a problem.

Mr. Carson - I suppose one problem that you have under this approach you would be putting all the burden on the local citizens to closely observe what their council is doing and take some action to adopt a charter to restrict them, if they go too far. Under the present system unless you are a charter city, you have to look at the state laws the legislature passed and if council wants to go beyond that you're going to go to the people and adopt a charter. I suppose maybe you're putting more burden on the people.

Mr. Fry - We had a long debate having to do with the City of Lorain and the City of Canton about the length of terms of mayor, city treasurer. It went on and on and of the 99 members on the House floor there were probably 16 that really cared. The members of the legislature were not qualified in that case or have enough interest to make a decision. I'd much rather see things like this decided at the local level.

Mrs. Orfirer - My only view is that as I understand it, the Constitution does not really state what exists. It is now operating under court decisions rather than under the Constitution, and my feeling is that whatever we determine ought to exist we ought to write into the Constitution, and let everybody else argue about it from there on. I don't have strong feelings, perhaps because I don't have enough knowledge

to have a clear cut opinion about what the provisions ought to be. I guess I have been raised on the idea that once you have a charter you ought to be able to have more power than if you don't have one, and this whole idea of being limited by the charter is kind of foreign to me. I'm not sure I understand that.

Mrs. Eriksson - One limitation is debt incurrence and the ten mill limit. Although a charter can permit the levy of more than 10 mills it could also restrict so that the 10 mill limitation could be something less than 10 mills.

Mrs. Orfirer - Well, the charter can provide whatever the people want it to provide. So in that sense it can be made to restrict. But it's within the power of the people, they're given free rein to adopt almost as much power as they want, except when it comes under the health and sanitary regulations. Is that a correct interpretation? The people can determine to put any power in their charter except as it conflicts with the state health and sanitary regulations, and taxes. So I don't see there's a limitation unless it's a limitation that the people want to adopt, which is free choice and not a limitation.

Prof. Vaubel - It's the local people's limitation on themselves.

Mrs. Eriksson - If you look at Version C, you will find a clear constitutional distinction between charters and noncharter cities based on variance or conflict. Version C, as far as noncharter municipalities are concerned, would essentially say what the present situation is.

Mrs. Orfirer - Version A makes no differentiation between charter and noncharter and says that neither of them may be in conflict in police powers.

Mr. Carson - Does the word variance come from the Supreme Court?

Mrs. Eriksson - Yes, it does come from court interpretations and variance is the word that we used in the county local self-government.

Mrs. Orfirer - That's a lot stronger, a lot more restricting than "in conflict."

Mr. Fry - I suggest we take Version A and use that part of the language that we've got in the Illinois Constitution as to those powers. I think this would clear up a lot of the misunderstandings.

Mrs. Orfirer - Let's try together to outline the possibilities, and then maybe we can eliminate. Supposing we start with one, "No differentiation between charter and noncharter and the possibilities under that would be that nothing could be in conflict with general law or it could be the reverse of that.

Mrs. Eriksson - Or that police powers could not be in conflict but that structure could conflict.

Mrs. Orfirer - Another possibility is that a noncharter municipality would have these three possibilities. I think we're back to the point of whether there should be any difference between a charter and a noncharter municipality.

Prof. Vaubel - If you leave the city without a charter, to have the same power over its structure I guess it resolves itself as to whether you're leaving the structural problem in the hands of the people or in the hands of the city council. If it is



left in the hands of the people, it would say you could only set up your structure by charter. Do you want the structure given to you by the people for the city or a council for the city or the legislature of the state?

Mr. Carson - There is an alternative which I am not sure has been discussed. An alternative for a noncharter city where a structure question occurs and you may not want to frame a charter is a referendum issued to the people. Has that been discussed?

Mrs. Eriksson - Section 2 of the Constitution presently says that the General Assembly passes laws for the general government but additional laws may be passed for the government of municipalities adopting the same, referring to the general statutory provisions. "But no such additional law shall become operative until it has been submitted to the electors." So there is a referendum on something which is considered to be an additional law.

Mr. Carson - Now let me just take a simple example. Let's assume that the Ohio statute for a 5,000 resident city is a 7 man council. Now let's say that this 5,000 population city has no charter. They've tried a charter commission and it hasn't worked--that they want to have 15 councilmen--and so they want to vary from state law and they don't want to adopt a charter. Let's say they are required to go to the people, on that one aspect of structure. This is another alternative which would permit individual municipalities to vary from state law on local government issues.

Mr. Fry - That answers my objection. The control lies eventually with the local people.

Mrs. Cave - I want to comment further on the case that you gave. If they are going to have a 15 member council and they are able to do this by submitting it to the electors then the next election they have for councilmen they get a whole new council or half a new council these people decide its ridiculous having a 15 member council--councils are like this, there's quite a turnover in city councils. Do you want them to be playing around with the structure of their council every time there's an election?

Mr. Fry - They still have to go back to the people again.

Mrs. Cave - If they campaign on that issue and get elected on it, it's a disruption of the government of the city.

Mrs. Eriksson - Of course, if they had a charter they could. Go back and forth every election if they wanted to.

Mr. Carson - I think there has been a feeling around the state that there should be some encouragement toward cities adopting charters so that they can plan their own destinies. Yet the progression toward charters hasn't been overwhelming. What I am suggesting is a means to permit municipalities to go part way and directionally perhaps this would not be repugnant.

Prof. Vaubel - What about the question whether the council would be elected at large or by precinct? Would this be determined by the public referendum?

Mrs. Eriksson - If it varied from the statute it would be a referendum just as the number of councilmen would be.

number of council would be.

Mr. Fry - In other words, you would have the council as set up by the statute and any variance from that would be by referendum.

Mr. Heminger - You're still envisioning state statutes that they can vary from.

Mr. Fry - Which answers the problem that we're getting to. It gives local government the final say in the form of government they have.

Mrs. Orfirer - This would be a third possibility. You would be putting in an intermediary step.

Mr. Fry - It would just be a variation on one of the two possibilities you have right now. You've got either charter or noncharter and this is an alternative for the noncharter type.

Mrs. Orfirer - That's what I'm saying. It's a middle alternative.

Mr. Fry - There has to be a structure that they can start with.

Mr. Carson - This would settle the disturbing question about the 1902 code.

Mrs. Eriksson - This would almost require writing something into the Constitution from Pettit v. Wagner because that's where we're getting the restriction from, and if we're going to vary on that restriction we have to put something in here expressing that.

Mr. Carson - Wouldn't the "including but not limited to" take care of it? I'm talking here only about noncharter cities.

Prof. Vaubel - I still have a question. The state law provides that for this size city, we have 7 councilmen. If we're going to change either the number or running at large would it require a referendum or can council say next time we'll elect by precincts or change this system to at large?

Mrs. Orfirer - Now let me ask a question. Is it your intention to provide that this type of referendum could be used for any organizational or functional purpose?

Mr. Carson - We get into definition questions, but I guess I am talking about local self-government.

Mrs. Orfirer - Not only organization but government. Not only structure but powers.

Mrs. Eriksson - I think what Nolan would mean would be whatever local self-government presently means with respect to noncharter cities.

Mr. Carson - The reason I'm saying this Linda, it's a half way step toward a charter. To date there's been only one alternative and that's a whole charter, and this would be a step toward a charter without having to permit it to vary either in structure or power if the people approve it as it is.

Mr. Fry - And you're not doing anything in the noncharter field that we can't do with a charter. We can change the charter.

Mr. Carson - Charlie's reference to the legislature, not liking to get into the subject, reminds me of one time when I was up there that we were asked to amend the sections dealing with villages. It set the date of election and everybody thought there was nothing substantive to the whole amendment. Nobody knew that there were some villages in Ohio that have primary elections and somebody called me on the phone; in fact people had already been elected at the primaries whose primary election would have been set aside. This wouldn't happen if these unusual cases could be settled within a municipality.

Mr. Fry - I think that approach certainly satisfies me in what I was saying originally about keeping local government at the local level where we can. And it answers the question of confusion on apparently not always consistent decisions. We don't have the language but can agree on the intent. I would suggest that we take that combination of Version A with the limitation as proposed by Nolan Carson. I want to see this authority given to the municipalities whether or not they have adopted a charter. Also, I like the more specific language in the Illinois Constitution with regard to power.

Mrs. Eriksson - The first thing you're saying is that you would like to see the non-charter cities have the power to vary from state law on government structure subject to a referendum, and this variance could come about, I would assume, either by city council presenting the ordinance to the people or through the initiative.

Mrs. Orfirer - Right. So we want that to carry over into powers too?

Mrs. Eriksson - Police powers cannot be in conflict with general laws. I would think you would not want to change that.

Mrs. Orfirer - Is there agreement on that? That's the second point of agreement. Noncharters must not conflict in police or sanitary regulations.

Mrs. Eriksson - Now then there is a group of presumably other powers which are not police powers but are the powers of local self-government which under the present language in the Constitution really includes structure and there is no other language for structure. Now can we distinguish between structure and what these other powers are?

Mrs. Orfirer - We may or may not need to depending on how we answer the question of what should be done with them. If we make the same determination as to powers as we just passed as to structure then we don't have to separate it. We can leave it as local self-government.

Mrs. Eriksson - There again, going back to Illinois, it says "exercise any power and perform any function pertaining to its government and affairs." What are the powers of local self-government that are not structure and are not police powers?

Prof. Vaubel - Civil service, of course, eminent domain can be held to be local self-government, off-street parking and then one left over which I hate to bring up because it may color the whole picture and that is weight limitations on highways, and local regulation prevails over the state law.

Mrs. Orfirer - What about things like garbage collection? There isn't any law that says they have to provide for garbage collection.

Mrs. Cave - You don't have to provide a police force either.

Mrs. Eriksson - Civil service we could get rid of by saying that there is another section of the Constitution, section 10 of Article XV, which says appointments and promotions to the civil service of the state of the counties and cities shall be made according to merit and fitness. Let's talk about eminent domain or disposal of government property because one would question whether they were a power or a structure. So I would think that would be a good example of a power of local self-government which is not structure.

Prof. Vaubel - We can vary the state law for an eminent domain procedure by setting up our own procedure in a charter.

Mr. Carson - This might be two steps toward a charter. Is there any reason why they shouldn't have the power to do that? A city may want one or two things varying from state law, whereas a charter normally covers all aspects of the city's operations.

Mrs. Eriksson - If you adopt a charter and don't have something in there it really is a restriction upon the operation of local government to that extent, so that there could be a real distinction between just wanting to vary one thing from state law and not wanting to bother with everything else.

Mrs. Orfirer - Next year you can come back with another one or this year you could have five of them. According to what we're proposing there is no limit on the number of changes that are put on the ballot by initiative petition or by the council to change either the structure or the functions of the noncharter municipality. You could have ten things on it. You could have one this year and one next year. Since you can do it this way is there any advantage in having a charter? I ask that question along two lines. First of all, is this a preferable method to enacting a charter, so we want to encourage or discourage the adoption of charters, because I think this would diminish the number of municipalities seeking charters. How many every five years seek a charter? But I think it would be fewer.

Mrs. Cave - They're not rushing to adopt charters. We have maybe 5 a year.

Mr. Fry - I would guess that there are enough of them that I wouldn't suggest that we eliminate the charter. The charters in many communities represent a lot of study and desire on the part of the people.

Mr. Carson - We're in the process of revising the Cincinnati charter. There are some things that we have to do--our council are paid \$8,000 a year and they're almost full-time people and we know we have to increase salaries and we think that if we go to the people with that one issue we won't have any trouble. They're also suggesting that the mayor be elected at large. Now he's elected by city council. That's another issue. They're making a four-year rather than a two-year term. That's another issue. If we go to the people with 15 changes it may be too much for the people to accept. I think that can be translated here a little bit. I think perhaps one reason why charters haven't been adopted is because the whole package is a scary package. But you may have one issue that is real important. You may need a little larger council, you think, or it may be four-year terms or something that could become an issue in one community. That one thing you might be able to sell and get a better form of government, where the powers that be aren't convinced that you could sell a whole charter, so it seems to me that there is a possibility that you might be

able to get a little better government to solve specific problems more quickly than if you wait for a charter to be adopted.

Mrs. Orfirer - I'm just being devil's advocate for the moment. What I was leading up to is a point that I think John would make if he were here which is the concern about making the whole thing hang together. But if you're going to make some 3 or 4 or 10 changes are people going to look at the whole structure the way they would have to if they were writing a charter? Tentatively we have made two decisions.

Mrs. Eriksson - A decision for noncharter municipalities for referendum on structural points and leave the police power conflict clause the same. Now we're talking about these other powers. I assume Nolan has reached the conclusion that he sees no reason why, if a noncharter city wanted to modify the state eminent domain law within its own confines, it should not be able to do so.

Mr. Carson - A charter city can vary with respect to nonstructure powers, so on this theory I am unable to see why a noncharter city could not.

Mrs. Orfirer - Let me try to pull this together. As I see where we're getting to it's a three-step procedure. You would have noncharter municipalities which could not be in conflict with state law in any regard, unless they take the intermediary step by referendum, in which case they could vary or be in conflict with any state law except police power. A charter municipality can do anything it wants except that it may not be in conflict on sanitary and police regulations. Is this total package what you think you would like?

Mrs. Eriksson - A charter city also is subject to the statewide concern doctrine which means that if the legislature determines that something is of statewide concern it is not a matter of local self-government.

Prof. Vaubel - One thing that is likely to create a problem and that would be the change from your referendum in changing from 7 to 15 members, how can you change back again?

Mrs. Orfirer - The same way.

Prof. Vaubel - Only in the same way, not by council's further action? So that it would have the effect of a partial charter. Then you also said the possibility of initiating an ordinance rather than passing one and sending it to referendum.

Mr. Carson - I must differ with Charlie Fry on the Illinois language. I don't think it is that much better.

Mrs. Eriksson - I think we know what police, sanitary and other regulations are in Ohio. If we changed the wording we would have more problems in interpreting them.

Mr. Carson - I call these mini-charters.

Mrs. Orfirer - Are we still faced with the problem of a definition of state concerns?

Mrs. Eriksson - We have now discussed what we conceive to be included in this question of local self-government. Perhaps in the drafting we can present one or two alternates that would resolve this question with respect to noncharter cities. The important

question is do you want to make any changes with respect to charter cities?

Mrs. Orfirer - Changes of what kind?

Mrs. Eriksson - Either in the police power clause or in the powers of local self-government. We're going to be doing this with respect to noncharter cities. Perhaps what we need to do is to make a list on the other side of things which the court has held are not powers of local self-government, with respect to charter cities particularly.

Prof. Vaubel - I think I can see where we had an initial conflict in terminology. You were thinking of the importance of the local self-government definition. I was thinking of it as distinguished between police power and local self-government. You were thinking, I think, between local self-government and statewide concern. There's a lot of power in the police power alone. For example, again, when we start to list, I think you would have to look at it from the standpoint of what kind of control you want. If it's exclusive state control, I would equate that with statewide concern. Such things as education, possibly building of state highways, and annexation.

Mrs. Eriksson - We can exclude courts and education because the judicial system is established by the Constitution and education is a specific constitutional state concern. But take a question like annexation. Even a charter city cannot provide differently from the state law with respect to annexation, so that's something that somebody put under this statewide concern doctrine.

Prof. Vaubel - That gets me to the point. Annexation has some effect within the city. It also has some very substantial effect outside. In fact it's really controlling, because you're giving the territory back to the township so it is exclusive state power. When you get to utility regulation, do you want this to be exclusively state power? I would call it a police power myself. It's hard for me to think of it in any other way. If it's supposed to be exclusively state power, we can treat it as exclusive. Secondly, I don't think it is exclusive. I think there is a mutual interest. In the Beachwood case, they said anything which has any effect out of the city is a matter of statewide concern and up to the legislature. Now if they meant exclusively up to the legislature, what's left? Anything that has any effect outside the city--and they used that for the Painesville case to get into the utility area.

Mrs. Orfirer - There's really nothing in the Constitution that states that this is strictly the state's concern.

Mrs. Eriksson - What the court can always say is that this is not a power of local self-government, and therefore charter and noncharter cities alike are subject to state law. And that's what they have said in some of the cases without relying on its being police power.

Mrs. Orfirer - So we have to make a decision as to whether we want to do something to try to clarify this in the Constitution. Supposing that we do, and I am making that supposition, how do we go about it? Somewhere you have to figure out this dividing line that we were talking about earlier.

Mr. Carson - Why not give the legislature in the Constitution the power to determine what statewide concern is?

Mrs. Eriksson - Which is really what the Illinois Constitution does. Another way is



simply to include everything again within the conflict clause. At the present time charter cities anyway under interpretation have an absolute power to local self-government. And the only way the General Assembly can prevail is if it is not a matter of local self-government. Now if you make that subject to the conflict clause then the General Assembly will always prevail. But a city can do something which varies from that general law as long as it does not conflict with it.

Mrs. Orfirer - Does that solve our problem? I'm not sure it's the right way but it does solve the problem of what belongs to whom.

Prof. Vaubel - It brings more of the structure under the state but I keep coming back to the case of where the state came in and said the city can't put wires underground. Does it affect something outside of the city? The court approached it from that standpoint. The other possibility would be whatever affects outside the city, the city can't do, which is the Beachwood case. By a kind of accident I fell back to the proposition of whatever is a police power and is directed territorially only to the management not trying to regulate something outside but only what occurs within. In other words, you have to put your wires underneath in this city, but we don't control what you do outside of the territory. In other words, making the limits of the territory the limit of power in the area of police power and when you try to move outside it's a shared power that the state and the city can exercise. But the city can't conflict.

Mrs. Orfirer - I thought that's what you got through saying was so terribly limited.

Prof. Vaubel - You're legislating only for the people within our borders. If they carry that Beachwood case much further I think police power, so far as local autonomy is concerned, will be pretty well wiped out. Because almost anything which the city does which regards police regulation, almost anything is going to have some effect outside.

Mrs. Orfirer - Can you give us a couple of examples, using the territorial limitations?

Prof. Vaubel - It would be a way of preserving, I think, municipal police power but preserving it in the form that initially was, namely, shared power. It would only preserve it and not permit the state to come in and start grabbing police power excluding the cities, within the boundaries of the state. It would preserve the police power as a shared basis and I think on a shared basis it works out pretty well because if there is an interest at both ends it ought to be recognized, and if it's an interest that's going to be represented by both sides trying to do something. And both sides can do something except that the state has a superior authority in case of conflict. Right now a city cannot order a high tension wire to be underground within city limits. Now isn't the city interested? Is the state's interest superior? I think so.

Mr. Carson - Let's say they shared it.

Prof. Vaubel - Then the state could regulate.

Mr. Carson - Let's say the state would say we don't want any underground, and the city wants it underground. Would the state prevail in that case?

Prof. Vaubel - A very tight situation.

Mr. Carson - Power that's shared works only if there is agreement.

Prof. Vaubel - The state would prevail if they "pass general laws," rather than deny the city power to act. If the state simply said we want no wires underground I think that conceivably could be called a general law regulating wires. And any conflict on the part of the city would not be valid. This is a simple change in terminology but I think it has a substantial effect. If the state came in and said the city will not enact any ordinance requiring them to go underground or not to go underground or any regulation on this particular point, then they are denying the city power and they're leaving the thing unregulated, until they themselves come in with what they want and that's the vacuum I was talking about. You can't have a vacuum, as I view the general laws concept; it's the price that you pay. There may be circumstances where absence of regulation may be a desirable thing. They don't need a doctrine of statewide concern, only of the police power.

Mr. Carson - A charter city and the powers of local self government and the statewide concern aspect of that, does the city win? Or the state win?

Mrs. Eriksson - The state wins with the charter city, if the court says it is a statewide concern and not a power of local self-government.

Mr. Carson - In the police power aspect in a charter city, both can exercise the power so long as the city does not conflict.

Mrs. Orfirer - The problem is that the Constitution doesn't say anything about statewide concerns, and this is where the confusion comes in.

Mr. Carson - Let's assume that in this area that in order for something to be of statewide concern that the legislature had to declare it as such in the legislation regulating that aspect of life. So they have to make a positive decision that it is a matter of statewide concern to take it away from municipalities and shall so state in the legislation. It would be one way to eliminate the litigation aspects of what is and what is not.

Mrs. Orfirer - Are you assuming that if it were of statewide concern it would preempt the matter?

Mrs. Eriksson - That would be the next question.

Mr. Carson - What you're really doing is taking from the courts the determination and giving it to the legislature.

Mrs. Eriksson - Then would you permit cities to vary but not conflict with a statewide concern doctrine? Or would you say that they could not vary from it?

Mr. Carson - What is the situation today?

Mrs. Eriksson - If it is a statewide concern doctrine then the city cannot vary from it. It's a preemption.

Mr. Carson - Just for starters all I'm saying is that you could transfer that decision from the courts to the legislature, as to what is a matter of statewide concern and hence what is preemptive over the powers of a charter city.

Mrs. Eriksson - Would that determination be conclusive?

Mr. Carson - The city could act unless the legislature, in its wisdom, decides that here is one area which they say in the legislation is of such statewide concern that it needs to be preempted. They have to make a determination and state it in the legislation. This is a little bit different from the Illinois language.

Prof. Vaubel - Of course the crucial question at this time is what are you seeking to achieve?

Mr. Carson - I don't know. I'm not so sure that the problem worries me as much as it seems to other people.

Mrs. Orfirer - What we're seeking, I suppose, is a distribution of power.

Prof. Vaubel - Is there some desire to have preemption as distinguished from what we now have? In general, there is no conflict. Is there some area where we prefer preemption to no conflict?

Mrs. Orfirer - I would pose another question which is to use what Nolan is saying and change it from at variance to no conflict. You still have the same decision to make. Do you want the legislature by whatever majority you choose to be able to determine where the local governments cannot be in conflict?

Mr. Carson - I am not advocating anything. Just trying to drop possibilities. I don't even know what the dimensions of this problem are.

Mrs. Eriksson - We need a list of these cases which have relied upon the statewide concern doctrine, as opposed to a police power, and the subject matter.

Mr. Carson - Let me ask, Ann, are there inequities except perhaps the one that the Professor mentioned, that are taking away powers that the municipalities ought to have or is it a question of trying to clarify situations to prevent future litigation?

Mrs. Eriksson - I would assume from the fact that Mr. Gotherman wants us to leave section 3 alone that he does not believe that there are instances where statewide concern has been identified to the detriment of the power of municipalities.

Mrs. Cave - I just think he doesn't like to see the Constitution tampered with.

Mrs. Orfirer - It seems to me that someone has to make a decision. It has to be the legislature or it has to be the courts. Or it has to be in the Constitution. So that's our three choices. You proposed that it should be the legislature; John says it should be the courts; I think my feeling off the top of my head is that it ought to be the Constitution but I don't know a way to do it.

Prof. Vaubel - I think when we say the court we really say the Constitution.

Mrs. Orfirer - The question is where we want to give the deciding power.

Mr. Carson - It would seem impossible to me to write language in the Constitution that would help much in this area.

Mrs. Eriksson - You can throw the burden one way or the other to the legislature or

not to the legislature, either by doing as you suggest or by including it under the conflict clause.

Mr. Carson - In the debt article we did not make it capricious. Action by the legislature could still be overturned by the courts, as I recall. To go back a moment. I do think, Linda, that the first thing would be how serious this problem is. We had this discussion at the last meeting when Professor Stocker was there. I'm sure there are questions we have to worry with. But is it important enough to take something away that now resides in the Constitution and the courts?

Prof. Vaubel - I think statewide concern as it has been used in our courts is quite dangerous to home rule. I think it could upset the whole civil service system. The other side of the coin is that if you don't adopt a greater power than "no conflict" you are acting as a limit on the state's ability to deal with problems. If you don't give the state the opportunity, there will be an area in which there will be no regulation. If the court continues to go the route of statewide concern it would be a very serious curtailment of city power. The state has to have authority. The question is do they have to have more authority than no conflict provides?

Mrs. Orfirer - Before we adjourn, I would like to go back to our discussion at the last meeting about whether there were certain areas which the state should take over, should have the responsibility to provide, and we talked about education and transportation. You have received some suggested drafts, for the purpose of helping us to clarify our thoughts as to whether this type of provision should be in the Constitution or not. Whether it could be done in a way that could be acceptable.

Mr. Carson - This type of provision, I would guess, goes way beyond the function of this committee alone. These examples certainly do.

Mrs. Eriksson - I don't know what other committee will specifically be dealing with this kind of a topic. For example, both of these subjects, consumer protection and transportation, are certainly local government functions. They're also state functions.

Mr. Carson - You may remember I raised this with Mr. Carter, at the time of our last Commission meeting. What we've been looking at so far is revision of what we have already got in the Constitution. How about new things that may need attention? I think he was planning to create a small thinking committee on this.

Mrs. Orfirer - I would suggest that we turn this over to the committee on committees and suggest that this whole area of where the Constitution should mandate the state to provide a service be taken up by this committee.

The next meeting will be in Columbus on the afternoon of January 9.

Summary

Present at the meeting on January 9, 1974 were Chairman Orfirer, Committee members Heminger, Ostrum, and Fry, and several guests, including Mr. and Mrs. Stewart Wallace, Professor Vaubel, John Gotherman of the Ohio Municipal League, Ed Loewe of the Chamber of Commerce and Lois Mills of the League of Women Voters.

Mrs. Orfirer - Through our public hearings and other sources, we had some input from county officials when we were considering the county provisions, but have not really had input from local officials. The Ohio Municipal League has formed a committee which is responding to the suggestions that come out of this committee, so we have asked them to meet with us. We want to hear from these people who are in constant working contact with these constitutional provisions as to whether there are substantive problems with the home rule provisions, or whether the problems are only semantic. We would emphasize that we are using the present drafts as a point of discussion only, not as representing any conclusions the committee has reached. We would like some of their own experiences and thoughts about what problems if any they see arising out of the present home rule provisions, whether they are semantic or substantive, and not approval or disapproval of specific ideas or language.

You will recall that Nolan had asked that the staff do some work reviewing cases to see what types of things had had to be adjudicated in recent years.

Mr. Kramer - There is a very small amount of home rule litigation in recent years. The Supreme Court in the last 20 years has been making a concerted effort to forge a logical and consistent theory of home rule. The best example is the Leavers case, where the court set out a number of propositions saying "this is what home rule is in capsule form." I examined all the reported Ohio cases beginning with January 1, 1970. I found 5 decisions; 2 Supreme Court, 2 in Courts of Appeals, and 1 Municipal Court. In the Supreme Court were State ex rel. Cronin v. Wald and Village of Willoughby Hills v. Corrigan. The Cronin case involved a charter section of the Cleveland charter permitting entering into contracts without competitive bidding where the amount in question was \$3,500 or less whereas the state statute at that time required competitive bids on contracts of \$1500 or less. An old case from 1930, Phillips v. Hume held that that kind of statutory provision prevailed over a charter provision because of the power of the General Assembly under Art. XIII section 6 and Art. XVIII section 13 to control municipal debt and taxation. In the Cronin case, the Supreme Court overruled the prior case and held that the process of entering into contracts and incurring indebtedness in that sense was a matter of local self-government and the charter provisions prevail. Many municipal attorneys felt that this was the proper interpretation and that Phillips v. Hume was wrong in the first place.

Mrs. Orfirer - In terms of the draft which places all powers of local self-government under the conflict clause, what would have been the result?

Mr. Kramer - I think the Court would say that there was a conflict and the state statute would prevail if section 3 placed all powers of local self-government under the conflict clause. Of course, it does not. Since the Court held that it was a matter of local self-government and the conflict clause does not apply, the City of Cleveland can decide in any way it wanted. It could provide for entering into contracts without any competitive bidding since it is not a constitutional requirement.

Mrs. Orfirer - What would have to have occurred to make it a variance instead of a conflict?

Mr. Kramer - Perhaps another case will illustrate that. It is a 1973 case from the Franklin County Court of Appeals where the Columbus ordinance imposed a heavier penalty for a traffic offense than the state law provided for the same offense. The claim was that the municipal ordinance was in conflict with the state statute. The state motor vehicle code also specifically provided that an ordinance could not provide for a different penalty. The Court held that it was not a conflict--a conflict only arises where an ordinance attempts to permit that which the state law prohibits or prohibit that which the state law permits. The mere difference in penalty does not give rise to a conflict and the attempt by the General Assembly to limit the power of the municipality was ineffective. In the earlier West Jefferson case, the General Assembly had attempted to limit the power of municipalities to pass ordinances dealing with door to door sales. The court held that if the General Assembly directly regulates that by law, then a municipality cannot be in conflict with that law but that the General Assembly cannot specifically limit the power of the municipality to deal with such matters. The same is true with a variance, although a variance is any difference. If the penalty were different, the municipal ordinance would be invalid to that extent, if we were concerned with a variance.

Mr. Kramer - The conflict clause is more restrictive on the state's power than it is on the municipal power. The variance language is more restrictive on the municipal power, because it permits really no differences. The conflict cases specifically arose out of police power. So the variance is tighter language. If there is any difference, the state will prevail so making the police power and the power of local self-government subject to either variance restriction or conflict in effect means a very limited kind of home rule. The home rule would apply really in those areas where the state has not legislated. It's the same sort of thing that the committee has already recommended with respect to counties. The counties would be free to act only in those cases where the General Assembly has failed to act. I think either conflict language or variance language would be applicable to both the first part and the second part and would be a great change in what we know as home rule today. It's a limitation on existing home rule.

Mrs. Orfirer - This is my understanding and that's why I didn't follow what you were saying when you said the conflict clause was more restrictive on the General Assembly than on the municipalities.

Mr. Kramer - I was speaking of the existing interpretations of the conflict clauses applicable only to the police power. But if you make it applicable generally I tend to think that using conflict language rather than variance language in that context might lead to more problems of interpretation because of the existing conflict cases dealing with police power where some differences are permitted, in the penalties and this sort of thing. How it applies to self-government questions I am not sure. But we do know from the use of the variance language in recent cases in the Supreme Court that they're talking about differences and just about any difference is a variance. The statute then would prevail over any ordinance of charter provisions. In fact this kind of language making the conflict clause applicable to both would seem to limit greatly the effect of a charter. And without any restriction on that language if the conflict language or variance language was applicable to both organization and government you would have to make an exception for a charter if you wanted the charter to be able to make any change in structure, because otherwise a charter itself would be in conflict with the state statute, as to the organization of the government.

Mrs. Eriksson - But section 7 makes a distinction between government and local self-



government. Section 3 talks only about local self-government.

Mr. Kramer - But I think you would have to spell out the difference so that there could be no argument. The charter itself would provide for a different form of government. Getting back to the cases, I don't think it's necessary to go through each one of them individually. The only other Supreme Court case was the Village of Willoughby Hills vs. Corrigan case which we have also discussed previously involving airport zoning. Actually it involved the Cuyahoga County Airport which is located in Willoughby Hills. It is a charter municipality and the airport zoning was enacted by a joint airport zoning board by the county commissioners of Cuyahoga and Lake Counties, and the Village of Willoughby Hills challenged the zoning regulations on the basis that they interfered with the home rule powers of Willoughby Hills, under its charter. The Supreme Court applied the doctrine of Painesville vs. C.E.I. case that the regulation of the use of the airports and air space leading to the airport was a matter, they used the term of statewide concern, a matter of concern to more than just Willoughby Hills, and therefore that this was a proper subject for legislation by the state and to the extent that this might be in conflict with any municipal legislation that the state regulation pursuant thereto would prevail. The case is found in 29 Ohio St. 2d 39.

Mrs. Eriksson - Did the case hold that the municipality could not enact zoning measures which conflicted with state law? Or that this is a matter of state concern and that the locality cannot do anything at all?

Mr. Kramer - Well it was interesting that the court found that there was no conflict. The Village of Willoughby Hills challenged the authority of the Joint Airport Zoning Board to enact these regulations. It was more in the nature of a declaratory judgment than anything else, and the Court held that the regulations were valid, and after saying that this was a matter of statewide concern and applying that doctrine said that, as a matter of fact, there was no conflict that they say between them, the airport zoning regulations and municipal regulations. It was in some respects a hypothetical case.

Mr. Ostrum - What was Willoughby Hills real concern? What was there about the airport regulations that they didn't like?

Mr. Kramer - From the case it's difficult to tell but I think their probable concern was the establishment of a principle that territory within the city was subject to the zoning power of an agency created by the state.

Mr. Ostrum - Then there was nothing but principle involved; rather than a concern about airplanes flying too low over residential areas or something like that?

Mr. Kramer - The court did get into a discussion of that and recognized that Grigsby and other cases hold that constant overflying can be a "taking" but that wasn't really involved here--there was no complaint that that was happening. No property owner was complaining that his property was taken. It was only the principles that were involved. The case isn't cluttered with facts. It seems further to reinforce the doctrine of the City of Beachwood case where the court held that the matter of detachment of territory was not a matter involving solely the city but involved territory outside the city and was not, therefore, a matter of local self-government, and the Painesville case which held that the transmission of power over long distances through municipal territory was a matter that concerned more than just that municipality and the state statute governed. It is not clear why the Supreme Court, especially

in the Painesville case, felt constrained even to talk about statewide concern, when the cases, both zoning and transmission over high tension wires, could have been decided on a conflict basis since both could be considered exercise of the police power. If you go back to some of the basic cases on licensing, such as liquor licenses, the state grants a license to permit that particular business within a municipality and the municipality may not also regulate and license that business, because it would be an effort to prohibit that which the state law permits. So, if the state establishes regulations under which high tension wires can be constructed this is, in effect, a license to operate. If the state says you can construct a wire and a municipality says otherwise, there would be a conflict under the police powers.

Mrs. Eriksson - If that is true, then if we bring all matters of local self-government come within the conflict clause, that would not make any difference in that particular case, would it?

Mr. Kramer - I don't like the term "statewide concern." As long as it is of more than local concern, by definition it is not a matter of local self-government. It may concern the city, but if it concerns more than the city, it is not, by definition, a matter of local self-government. The classic matters of local self-government are whether it's a manager form or a council-mayor form. And the police powers are a matter of local self-government, they are not a separate category.

Mrs. Eriksson - This draft of section 3 makes it clear that the police powers are matters of local self-government. We still have the court saying whether or not something is a matter of local self-government. If there is a need to distinguish between government, which I think of as structure, and powers, perhaps there is a need to write such a distinction in the constitution.

Mr. Kramer - There now is a very definite distinction between charter and noncharter municipalities. The real question is whether any change is desired or needed in home rule and the powers of local self-government. The cases and the interpretations are pretty well fixed, and from the point of view of the municipal attorney, he can predict results in particular cases.

Mrs. Orfirer - Just the fact that you might be able to predict results does not necessarily mean there are not problems and need for changes.

Mr. Kramer - There are always problems, but I think this is a different situation from that of counties where there was desire expressed for changes in the existing system.

Mrs. Eriksson - At the last committee meetings, some committee members were focussing on changes designed to give to noncharter cities the powers of charter cities.

Mr. Ostrum - Charlie Fry was saying that he wanted local self-government to do everything for itself that it could reasonably do. Problems are better solved at the grass roots. This draft appealed to me because it seemed to be clean cut and simple--maybe it isn't--but does it do what was intended? Making everything subject to non-conflict, including but not limited to the police powers.

Mrs. Eriksson - Mr. Fry was talking about the powers he would like to see cities have. All the examples were of a structural matter, and to that extent the language drafted for section 2 was intended to enable a noncharter city to vary as far as

structure is concerned from the state law, because that basically is what section 2 is talking about--if incorporation and government are interpreted the way I think they are.

Mrs. Orfirer - I think Charlie used those examples because they are easy to grab hold of, but didn't he also mean to include the powers of local self-government as well? If that is so, would section 3 tend to go against his wishes? Section 3, in the draft, eliminates the distinction between charter and noncharter cities, but it is limiting the charter cities in the way that noncharter cities are now limited, rather than expanding noncharter powers to the way charter city powers presently are.

Mrs. Eriksson - Except that noncharter cities could exercise powers of local self-government not in conflict with general laws, whereas the Leavers case prevents them from varying from general laws.

Mrs. Orfirer - In all future drafts and discussion, while we are in a decision-making phase, I suggest that we separate charter and noncharter municipalities. Then when we decide what we want to do, we can bring them together.

Mr. Kramer - I think there is very little evidence of noncharter municipalities coming to the General Assembly for legislation regarding either structure or powers.

Mrs. Eriksson - This was exactly Mr. Fry's point, though, that he thinks the legislature does spend too much time on these requests--terms of office, salaries, number of councilmen. These matters are frequently before the General Assembly.

Mr. Kramer - But treating those things as an exception, most of the requests for legislative action deal with finances--taxation and debt. Both charter and noncharter municipalities are subject to legislative control in these areas. But there has been very little legislative change in the basic structure and powers--the number of officials and departments, and what functions they perform--since the municipal code of 1902. As a practical matter, most of the smaller municipalities are very content to work within the municipal code. Even if you tell them that in many areas they have the power to go beyond the municipal code they wouldn't do such a thing.

Mrs. Eriksson - There are a few large noncharter municipalities and it is in these cities that the problems come of wanting to change the law with respect to their particular situation. These things do engage the time and attention of the legislature.

Mrs. Orfirer - If we start with noncharter municipalities, and we want to determine whether they need more powers than they now have, does the new section 2 draft solve this problem? permitting them to vary--or would you want to consider changing it so that they can vary but not be in conflict? Do you want to vary their powers under section 3 or is section 2 sufficient?

Mr. Heminger - What are examples of local self-government that a charter city has but not a noncharter city?

Mrs. Orfirer - Disposal of property and eminent domain are two that were mentioned at the last meeting. I would like to formulate some questions to be sent out to members of the committee and the Ohio Municipal League committee.

Should the tentative wording in section 2, conceived of as applying only to

structure, be expanded to cover nonpolice powers in section 2?

Does the committee feel that they would like noncharter municipalities to have more local self-government powers?

Mr. Kramer - You are really asking whether you are going to adopt the theory that all municipalities have all powers of local self-government, as distinguished from police power, and that none is subject to any overriding power of the General Assembly.

Mrs. Orfirer - Do we want to permit noncharter municipality to have local self-government powers which are not at variance or in conflict either one with statutes or powers as charter municipalities? I think there are degrees of limitation on the powers of noncharter municipalities which we can identify. The next question would be whether we want to make any changes in charter municipalities. One proposal is to place the powers of local self-government under the conflict clause. I doubt that there will be any support for any limitations on the local self-government powers of charter municipalities.

Mr. Ostrum - Is a charter municipality presently unlimited in the powers of local self-government or does the statewide concern doctrine limit the local self-government aspect?

Mr. Kramer - To some extent it can be a matter of semantics, but I think that on an abstract basis if the Court determines that the matter is a matter of local self-government and the charter municipality, as provided under the authority of its charter, is free to do what it wants to do.

Mrs. Orfirer - But the court is free to determine that it is a matter of larger concern.

Mr. Kramer - That's the question, whether it is a matter of local self-government.

Mr. Ostrum - If it's statewide concern, then the municipality cannot act at all.

Mrs. Orfirer - Right. All this discussion arose in the last couple of months out of our trying to work with the question of who draws the line or how the line is drawn between what is local concern and what is statewide concern. Where the General Assembly can act and where the charter municipality can act. Has there been enough of a problem that we should redraft the constitutional provisions?

Mrs. Eriksson - Perhaps the question should be put in terms not only whether local self-government should be made subject to the conflict clause, but is there any way to define whatever this local self-government is in such a fashion that there would be any expansion of the powers of charter cities to delineate areas where there can be both state and local action, rather than simply viewing statewide concern and local self-government as the opposites which means that in fact if it is statewide concern then a charter city has no power. Perhaps there are areas which are both statewide concern and local self-government which we could identify if we could re-define those terms somehow.

Professor Vaubel - You're using the words "local self-government" and "statewide concern" as two antagonists, yet I think we're using local self-government in two senses. It is not unusual that that should occur because the Court itself does it

time and time again, and Judge Taft didn't help matters any because he said local self-government includes the powers and structure of local self-government and police power. But in most of your discussion here we have talked about local self-government here as being structure primarily and eminent domain and a few other things. At least I would choose that terminology which means the police power as a separate entity. We have one circle of local self-government and police power and I'd bring them all under as city power. Or you could call them all local self-government but you'd have to realize that in so doing you're repeating yourself. Now I would say that statewide concern has nothing to do with the city. It's the state's power which ought to be exclusive state's power. What the court has on occasion done, though, is use statewide concern to grab up some of the police power of the state, which the state has anyway. If it's a police power measure both the state and the city are concerned, but it seems to me that if the state's concern is superior then the state can go ahead and regulate it.

Mrs. Eriksson - What I'm saying is that perhaps the state has a right to regulate whether wires should go overhead or underground but perhaps the city also has that right.

Mrs. Orfirer - It is my understanding that in this case they were not permitted to put the wires underground if they were within their municipal boundaries. I agree with Ann that they should have the right to.

Professor Vaubel - You can't divide the question that way.

Mrs. Orfirer - Why can't you?

Mr. Kramer - That was the whole question involved in the case. The fact whether the wires were going to run above ground outside of the municipality, then go underground and then come back out.

Mrs. Orfirer - If the municipality wanted them underground, why not?

Mr. Kramer - That was the point of the case. Because the court said that these are transmission lines that run interstate, or vast distances, to serve others than this municipality and if all the municipalities and jurisdictions along the way were able to make varying regulations about this that there could be a hodge podge and the ability of a single municipality to do something like this would greatly affect not itself so much as all the other municipalities who are dependent.

Mrs. Orfirer - If it's a question of fluoridation I stand opposite you and say the state ought to be able to decide that the state needs fluoridated water. Putting wires underground I think the municipality ought to be able to decide.

Mr. Kramer - Obviously, it affects the city but what the Court is saying is that the power of local self-government concerns only the city, since this is not a matter which affects solely this municipality, therefore it is not a matter of local self-government.

Professor Vaubel - Does it only concern the state:

Mr. Kramer - Of course not.

Professor Vaubel - If there is joint power the state prevails.

Mr. Gotherman - I'm not so sure that that statute passed in the hot wires bill was a police regulation. I think if it had been general law the utility company would have argued that very strenuously.

Mrs. Orfirer - We have a situation whereby the Court decreed that anything that extends beyond one municipality is within the jurisdiction of the General Assembly. This is by decision of the Court. This is not in the Constitution.

Mr. Kramer - There is no reference to statewide concern in the Constitution. I think the best analogy to all of this probably the interstate commerce clause of the federal constitution. Interstate commerce may sound like a very simple term and the states may not interfere by regulating matters involving interstate commerce. Yet there are many volumes of interpretation by the Supreme Court on what is interstate commerce, and actually the ability of the Supreme Court to deal with this very broad concept in changing circumstances over the years is probably the thing that has held the union together. Had it not been for the ability of the Supreme Court to do that, the Union would probably have foundered long before the Civil War. A concept like local self-government is one that is very much like interstate commerce, in that it is a very broad term subject to interpretation which the Supreme Court has said varies according to time and circumstances. It's really a matter of judgment as to how well the Supreme Court of Ohio has done that. Personally, I think that the consensus that you will find among those most directly affected by it is that the Supreme Court has done well. I think the dearth of recent cases dealing with this subject is a further indication that the concepts are well understood and that there are relatively few questions that require litigation to solve them. The function of a constitution is really to govern the relationships and provide the fundamental law on which you govern conduct and relationships. Then I think I would have to conclude that the existing sections, ambiguous as they may be, are serving their purpose pretty well. That's what we're talking about--whether some change has to be made for noncharter municipalities, whether the language is perfect or not, I would think that any attempt to change the language is an attempt to make clear what we already know would lead to more questions, just as to language and not as to substance.

Mr. Gotherman - If you include local self-government under the conflict clause, the General Assembly would pass laws that would change the structure of the City of Cleveland, or of Shaker Heights because they would be in conflict with the charters of those communities. It would be in conflict with the general law of structure, the procedure of passing ordinances. Those statutes would suddenly become operative with regard to all municipalities. It is irrelevant as to whether it is a matter of local concern because you would be changing the Constitution and saying that the state can decide. Under this draft, the only way you could vary that would be to submit everything, like the councilmen's salaries, the structure of the government, everything that is in the charter would have to be voted on under section 2 in order to vary from state law.

Mr. Kramer - The intention was make the structure of the government at least fall under section 7 and be provided for in the charter.

Mr. Gotherman - Let's take an example of who has the authority to plan for residential streets. The law could be passed giving the Department of Transportation authority to plan for all streets and this would be in conflict with general law.

Mrs. Orfirer - I don't really think that that's what anybody on this committee really wishes to do.



Mrs. Eriksson - That certainly isn't what was intended to be covered by this concept of local self-government. John, can a noncharter city presently control the planning and specifications of its own streets?

Mr. Gotherman - Just to the extent that the General Assembly has not acted. To the extent there is a conflict between local and state powers, the local power is in doubt. And that's true whether we're dealing with structure, or procedure passage of ordinances or whether we're dealing with the simple matter of councilmen's salaries.

Mrs. Eriksson - At the last meeting we did talk about the possibility of including everything under the conflict clause, by making it clear that police powers were part of the powers of local self-government, but there was certainly no agreement reached on that and I put it down this way to focus on it more than anything else. I think there has to be, and could be, a distinction between government as referring to structure and local self-government in sections 2, 3, and 7.

Mr. Gotherman - As an example, Chapter 721. which deals with the sale and lease of property which is not a police power, is not a structure power. It probably isn't even a procedure power. So it is an example of a power of local self-government which would apply to charter and noncharter cities.

Mrs. Orfirer - Are we all agreed that we do not want to subject charter municipalities to having to bring all their powers under the state statutes?

Mr. Fry - On the contrary, our idea was to give noncharter cities more power.

Mrs. Orfirer - That's one thing we can clear away, so that we're going to have to deal with what we want for noncharter municipalities and then decide whether we want to bring them together or not. Where we are, it seems to me, is back to determining what we want for noncharter municipalities, whether we want to expand their powers in relation to the General Assembly or not. Charlie, your feeling is that we want to expand the power of noncharter municipalities. And I think that was the general feeling at our meeting a month ago. Is it your feeling that you want to make the same as the charter municipalities?

Mr. Fry - I really don't know that much about the relative powers but I am certain that it was pretty much a consensus that we felt if we could give more local self-government to noncharter cities that this was the feeling of this group.

Mrs. Orfirer - Did you mean this to apply to powers as well as structure?

Mr. Fry - Yes.

Mr. Gotherman - The new paragraph in section 2 is probably the evidence of that feeling. You might divide section 3 into three separate sentences, even if you had to repeat some language--one would deal with all powers of local self-government for noncharters; one would deal with all powers of local self-government for charter cities; one that deals with police powers treating them the same which is the current law, and doesn't cause too many problems. It wouldn't make any sense to distinguish between charter and noncharter so far as police power is concerned. For noncharter cities, you've got to tell the Supreme Court that they have to get rid of the variance concept or you have to adopt the variance concept as a matter of constitutional fiat.

Mrs. Eriksson - The other question to ask, as far as noncharters are concerned, is, if you want to permit variance from the general law then do you want to require that each such variance must be adopted by the people which is what we do in section 2 with what I have termed to be structural? Or do you permit city council to--as in a charter city--to enact that power?

Mrs. Orfirer - In the new 2 where you use "laws for the government of the municipality", Ann has interpreted that to mean structure. Would you interpret that the same way, John?

Mr. Gotherman - Sections 2 and 7 read together say that charter cities can do whatever they want to in structure and procedure. The problem is how do you define structure and procedure? What is a power that deals with planning, for example? At least we have the existing case law to tell us what they said.

Mrs. Orfirer - The basic decision that has to be made is whether we want this new wording in section 2 to apply only to structure or not. Then, how it should be used, whether by the people or by council.

Mr. Kramer - Under this language presumably it could be applicable to a particular situation. This language is not limited to changing the size of council or the term of the mayor. This would allow a variance in any particular situation. Sale of property, anything provided for in the Revised Code has to be--whatever a municipality can do, whatever falls under governmental structure--you could put to the people the question of zoning a particular piece of property in a particular way which would differ from the Revised Code. This language is not really limited to those kinds of matters that you would provide for in a charter.

Mr. Gotherman - Charters are changing and no longer deal only with structure and procedure problems.

Mrs. Orfirer - I don't feel that they should have to go for every little tiny thing to a vote of the people.

Mr. Kramer - Allowing the council to change something like the term of the mayor or the size of the council are things that even a charter municipality cannot do. It seems to me too that you have to find some method of trying to draw a dividing line between this individual approach and a charter. This would allow for the piecemeal enactment of a charter without the kind of procedural time safeguards that we have in all the other methods existing up until now, of a fundamental governmental document by the state or by counties or municipalities. It's easy to talk about in terms of specific things you might want to do but it really does carry one possibility, if it isn't limited, of allowing the adoption of a charter in effect without the same kind of procedure that a charter municipality has to follow or of this ability by initiative and referendum really to do anything on a particular subject rather than establishing a general power of government. There are a lot of problems involved in something like this, and I am concerned about the amount of language that it would take to hedge it around with the kind of limitations to limit it to the sort of things that it is really intended to do.

Mr. Gotherman - I really didn't mean to subscribe to the new language in section 7. I merely referred to that as a way you might approach it. I do tend to agree with what you have decided and perhaps we should not at this point raise a lot of questions. Powers of taxation are powers of local self-government. Would this be included?

It is difficult to distinguish between procedure and structure.

Mr. Fry - I think you're making this a lot more difficult than it needs to be .

Mr. Gotherman - In sections 2, 3, and 7 one issue is whether it's a power of local self-government. One is the variance problem, a concept that has been introduced by the Supreme Court in their own line of cases. Another would be the police power question. If we introduce a lot of new modifications you will no longer have four issues, but whatever number you come up with.

Mrs. Mills - I'm wondering if you couldn't solve your problem by making it easier for a noncharter city to become a charter city by the method of adopting the general law--those elements of the general law which would create a charter. By a vote of the people adopt that charter and then amend it to give them whatever powers they want to adopt. Change the procedure so that without a charter commission they can adopt a charter which is similar to what the law now provides.

Mr. Gotherman - The law provides optional forms which you can adopt by just a vote without having a charter.

Mrs. Mills - It would also enable the city to create power and do these other things that you want them to be able to do. If they had it at the same status as the charter city--

Mrs. Eriksson - In effect that's what we're doing here. What she's saying is that they should be able to adopt a charter and amend it and that's what we are really providing here. You could amend that by a referendum.

Mr. Fry - It seems that we have agreed that we want to give noncharter cities the right to alter the law with respect to power and structure and procedures, all three of these, then we go to the question whether it is necessary to go back to the people each time or shall the elected council have certain of these powers? This may be a simplistic approach but I would like to see if it's possible for us to have as simple language as possible. I'm not concerned with all the things we have in the statutes right now that might be in conflict. If we make our language clear enough in the Constitution those other statutes won't interfere anyhow.

Mrs. Orfirer - I don't know that we're agreed on all of that.

Mr. Fry - Well, let's come to a point of agreement. Tentatively we have agreed that we would like to expand the abilities of noncharter municipalities to change their structure--we said structure and procedures because everybody said they had to go together. Now do you want to expand the nonpolice powers of noncharter municipalities and if so do you want to amek them the same as charter municipalities have?

Mr. Ostrum - I don't know the answer to the question. I'm not so sure that I can speak for the noncharter cities on the powers of government and that's why I think it's important to have a session like you're planning with some city officials.

Mr. Kramer - If you go about doing all that you're talking about then isn't the only real distinction between a charter municipality and a noncharter municipality is the fact that one had an elected charter commission at some point? Wouldn't the simpler solution be simply to abolish the provisions for charters, charter commissions? You're talking about expanding the powers of noncharter municipalities by

letting them do anything that charter municipalities can do without having to go through the step of electing a charter commission. There are no rules as to what a charter has to say. You can adopt an extremely simple charter and make very few changes and by reference adopt all of the rest of the general laws, and most sections adopt great sections of the general law. Many charter commissions go out of their way to make very few changes because they want to get the charter adopted with the few changes that they feel are important, with the idea that any additional changes can be made by amendment. So that I think there really is an existing procedure. The only real stumbling block seems to be going through the procedure of electing a charter commission, to accomplish what you're talking about here. So that I wonder if the whole change in the Constitution and all of the verbiage that would be involved and all of the new questions that it could open up are really justified in light of the fact that the goal can be accomplished.

Mrs. Orfirer - But why should you have to go through a city charter commission just to change the number of people on your city council?

Mr. Gotherman - That's a bad example, because the law has been amended recently to permit cities some flexibility. A better example would be the mayor's salary. After the 1970 federal census the reapportionment figures in the Revised Code were revised and the legislature enacted a general law which allowed cities to vary the composition of council in terms of numbers--I think they can't exceed 17. The only thing it doesn't permit them to vary is the term of office.

Mrs. Orfirer - Are there other changes that a municipality might want to make that would not be permitted under existing law?

Mr. Gotherman - The most common example is the desire to locate an urban renewal department or income tax office in a particular existing department. Under the case law today it is very unlikely that a city may give a new function to a brand new department.

Mrs. Eriksson - Are there not also instances where city, small communities particularly have wanted to combine presently required officials into one department, like have a department of safety and combine police and fire?

Mr. Gotherman - The kind of problems smaller cities, noncharter cities, have are the structural procedures, not wanting to do it exactly as the General Assembly has provided for.

Mr. Kramer - I think that we will open a number of real questions in any kind of provisions like this. If we use the term "government" I think we know pretty broadly what that is, but I don't think we really can say that "government" means only structure because the whole question of the powers and who exercises them is so much bound up together. The general laws provide not only for certain departments and agencies and boards and commissions but also says that certain powers are to be exercised by them. Suppose a particular municipality says, by one of these enactments, abolishes a certain commission and creates another or combines the functions with another, is that just a matter of government or is that a matter of procedure or is that a matter of the exercise of power? I think you will open up a lot of questions.

Mr. Fry - But if you list all three, they are covered. If they want to do it that way, I don't see why they can't.

Mr. Kramer - But then you are obliterating distinctions between charter and non-charter cities. What is the purpose then for retaining this procedure for electing a charter commission?

Mrs. Orfirer - If we don't want it that broad, all we have to do is say "structure and Procedures" and let the courts decide.

Mr. Fry - I think that we agreed that we didn't care about the distinction--the only reason to continue to have charter and noncharter municipalities is that so many cities already have charters.

Mr. Kramer - If there is any validity to the charter commission procedure it is the ability of a group of people elected for that purpose to survey the whole situation and recommend a comprehensive charter. My question really goes to this. We've seen 50 years of litigation over "local self-government" and it is important to think about the consequences of introducing new terms in the Constitution.

Mrs. Eriksson - One advantage of having a charter even if additional powers are given to noncharter cities would be to provide for a form of government which is not provided for by statute. Which might be a very good reason to adopt a charter.

Mr. Kramer - I think you could adopt a whole different form of government by this procedure. Simply adopt variances from the general laws. Couldn't this "variance" be a comprehensive ordinance setting forth a whole new form of government? You could adopt a charter and short-cut the charter commission procedure. I don't believe that there would be any necessity to elect a charter commission to adopt a charter.

Mr. Gotherman - I think Representative Fry is suggesting a return to the Perrysburg doctrine which would eliminate the variance doctrine of Pettit v. Wagner and Leavers v. Canton which introduced something foreign to the Constitution--saying that whether or not you have a charter, you have the basic powers of local self-government and if there is a statute which conflicts with those basic powers then the statute is invalid. The cases still said that in matters concerning this "government" problem--structure and procedures--the law is still applicable to noncharter municipalities. Something like the salary of a councilman, that would be valid as determined locally, regardless of what the General Assembly would say. Although I think our people would stand up and cheer, I'm not so sure that is easily accomplished in light of the fact that you've had 50 years of case law interpreting these sections. I'm not sure how you go about doing it.

Although there is only an average of about 5 charters adopted a year, I still think charters are very important because about 60% of the cities, representing the major urban area governments, have charters. As we go on year after year, the variance doctrine becomes less and less important in the activities of the urban areas.

Mrs. Orfirer - How do you interpret the difference between a variance and a conflict?

Mr. Gotherman - A conflict, according to the cases, is applicable only to police powers and means any ordinance which prohibits something the state permits or permits something the state prohibits is in conflict.

Mrs. Orfirer - Not different from, but prohibit?

Mr. Gotherman - Yes. You can have comprehensive legislation in the same field and not have a conflict. In the private bottle club case, where the state did not regulate, but Cleveland did, there was no conflict. It can differ, but not be a conflict. In a variance, you can't have any difference at all. If you applied the variance doctrine to the police power, every time the state did anything, all a city could do is pass a parallel ordinance.

Mr. Kramer - If you take the cases involving local self-government, most have involved structure and government. The Leavers case, (retirement age) the variance language is used because the municipal ordinance said a person had to retire at a certain age and the state law said continue on during good behavior. That was a variance, which the city could not have. In that case, there was also a conflict.

Mr. Gotherman - Possibly one reason the court used that term is because they wanted to avoid the very problem we've been talking about, and that is applying the conflict clause to all powers of local self-government. So what they said that if it is a matter of local self-government, and you don't have a charter, you cannot vary from state law.

Mrs. Orfirer - If we change the powers of noncharter municipalities to not conflicting with state law rather than not varying, would we be making those powers greater or would we be restricting them?

Mr. Gotherman - I think you would be broadening them, but to what extent, I do not know.

Professor Vaubel - I don't know of any case defining variance, so you could say initially that it is different from conflict, but you don't know exactly how.

Mr. Kramer - The terms are used interchangeably in a couple of the propositions in the Leavers case.

Mrs. Eriksson - Gene's example of a city adopting a complete charter by this procedure was not what was intended. But I think you could solve that problem by redrafting.

The meeting was adjourned.



Summary

A meeting of the Local Government Committee took place January 29, 1974 in Parlor 7 at the Neil House, Columbus

Chairman Linda Orfirer presided.

Committee members present were Chairman Orfirer, Messrs. Carson, Speck, Russo, Ortrum and Calabrese. Staff members Kramer and Eriksson also attended. A committee of the Ohio Municipal League met with the committee. Larry O'Dell, Professor Vaubel, and Lois Mills were also present.

Mrs. Orfirer opened the meeting by expressing appreciation to Mr. Gotherman and his committee members for being present. Present from the Municipal League were Al Strozdas, City Manager of Springfield, Peter Donnelly, Finance Director for the city of Akron, Jim Mann, assistant city solicitor for Chillicothe, Tom Luebbers, solicitor for Cincinnati, Dale Helsel, City Mgr of Middletown, Frank Pizza, Law Director of Toledo, Walter Kelly, Mayor of Shaker Heights, Mike Gable, Administrator of state and federal programs, Columbus, Donald Barrett, Mayor of Athens, and James Flick, Finance Director of Cincinnati.

Mr. Helsel - You already recognize the diversity of positions, size and territory that these people bring to this meeting. I might mention one further diversity and that is that both charter and noncharter cities--we think a quite broad representation of Ohio municipalities. I would like to give you a quick consensus of our report with the questions that you had raised. Before I do that I want to mention that it was the feeling of the group today that the home rule provisions are working pretty well in Ohio as far as we are concerned. They seem to be working out alright. Over the years there have been court cases, but it has stabilized to where most communities know where they stand on matters of home rule. Obviously there are exceptions but the broad picture, from a practical point of view, as the people who have to work with it we feel that the home rule provisions and the charter provisions are working pretty well and not creating widespread problems. The first question is, should Ohio adopt the home rule provisions of the Model State Constitution? We felt that it should not adopt that. It might be that the provision would work in a state that does not have a history of home rule but we're talking about Ohio where we have had home rule for many years under one particular type of home rule Constitution and this would change it. It would be a whole different way of looking at it. It throws into question a lot of cases that we have dealt with up to this point. I don't feel that it's necessary, frankly, that we change those provisions. Second, we don't feel that further classification of municipal corporations is desirable. The problems communities face are not necessarily a function of their size. Small and large communities frequently share the same problems. When you do get into classification you're going to get into the problem of what would be the basis you use. We can show you villages that operate utilities, that have a full police department, and a full range of municipal operations and we have cities of 75,000 that are not that sophisticated, not doing that many things, so that size does not determine the problems that cities are going to face. That same reasoning applies to limiting charters to cities. We feel, however, that the Constitution could provide the state the right to alter boundaries. We think there are some powers that ought to be spelled out. We would hope that clearly would include that it be done by general law and not special law and we don't feel that the Constitution should tell the legislature that this should be done any particular way. Should it be done by a state boundary commission, local boundary commission?

They ought to give broad powers to the legislature, to say how they are going to go about this, not to use the Constitution to tell the legislature how to solve the problem. On the question of neighborhood governance, there was a long discussion on that and there were some who didn't know what the question was all about because it was new. We are of the opinion that through charter revisions neighborhood governance could be accomplished. Certainly through a combination of charter changes and legislative actions neighborhood government could be provided. We don't want to answer the question, should there be neighborhood governments? The problem of neighborhoods as opposed to regional concepts is well recognized by us. The big problem is how do you make your government bigger and go into regional government at the same time make it smaller and go into neighborhoods? We don't have a clear cut answer. I would say only that we do feel charter cities could create neighborhoods if they want to.

On the question you asked about noncharter cities you might be interested in how this worked out. First we went through and answered yes, noncharter cities should be able to change the structure and it should be done by a vote of the people and yes, they should be allowed to make changes different from general laws by a vote of the people. Then we got to talking about it and thinking what would that do to those communities back home--what is the purpose of the charter in the first place? The charter commission should provide over-all relationships--it should be done as a comprehensive look at your city with the elected charter commission should give that. Now when you start allowing tinkering with the structure of organization and procedures by making changes piecemeal in your government then we think changes should be done with an overall view so we reversed ourselves and felt that "no" is our answer to these questions. We know there are some problems, but we should go to the legislature and talk about what the problems are--and representatives of noncharter cities were in accord that they would just as soon go to the state legislature to correct some of those problems, than to go this route and have a piecemeal approach in each community. Now some of these special problems dealing with transportation and consumer protection we felt that special treatment in a Constitution of functional type of thing really ought not to be. In other words don't add the functions that are fads of the day to the Constitution. It raised the question of using the Constitution as an educational tool to mandating that the state legislature address specific areas. The problem with mandating is that the General Assembly may not want to do it in the first place and the mandate will not be effective. So we would prefer that special functions be kept out of the Constitution. Also, while we have your ear, we would like to urge that if it's at all practical we wish that something could be done about eliminating the indirect debt limitation. Some adjustment to existing restrictions on taxing powers is needed. All of us feel that mandated functions by the state that cost us money--money that we can't raise due to restrictions on taxation powers puts us in a most difficult situation.

Mrs. Orfirer - We appreciate your positions and would like to discuss with you some of these areas. Having everyone express their point of view on it will help us find our way through it. You feel that population is not a criteria for basing classification. You disapproved of any further classification or change in classification, I gather. Do you feel that that 5,000 limit is the correct one?

Mr. Helsel - I do know there are villages that are much more active than cities many times their size. That is they are active governmentally. They have utilities, water problems, sewage treatment plants, special police and then there are other cities that operate entirely outside of that--someone else is doing most of these things for them. So my personal feeling is that 5,000 isn't necessary but I wouldn't

want to speak for the group. You take four or five cities of equal size and compare what they are doing and I think you'll find that they are doing a lot of different things and then you might take Cleveland and compare it to a smaller city and find that they have the same type of problem.

Mrs. Orfirer - Would density of population be a better standard?

Mr. Helsel - Density might be, poverty might be. The ability to raise taxes would be just as valid a classification.

Mrs. Orfirer - How would you react to permitting a choice of criteria? If population does not determine, what does? If you all feel that you have not found any need for classification, then we're interested in knowing that too.

Mr. Donnelly - Classification in the past was used to avoid doing things and there are no safeguards built in to any classification scheme that you might put into the Constitution that would prevent the legislature in the future from opting out of certain responsibilities they have to citizens in the state. The whole thrust of the home rule amendment was in fact to get around the old classification scheme that existed prior to that time. Classification raises that "old" specter. Making what amounts to a good classification of city problems today might not be a good classification ten years from now. Cities exist in a dynamic world. Most of the cities in Ohio share the same problems. The main difference is one of scale of the problems--not different problems due to size.

Mrs. Orfirer - What if you don't spell out the criteria or the types in the Constitution but just say that the legislature may classify?

Mr. Helsel - You might end up, as a few years ago, where the state said that the state highway department would maintain interstate routes in communities of certain size--under 100,000. The larger cities reeled under that. There is a fear that you would use some arbitrary division--that's one time even the smaller communities said that wasn't fair in treatment of large cities.

Mr. Russo - I am in agreement with the two previous speakers. I don't think that we should have classification of cities in the Constitution.

Mr. Gable - I think the crux is why classify? Why have classification? We don't see the need. What you're really talking about is to what use is the classification going to be put? You would say that certain cities in a, b, or c class have certain powers but others in a different classification cannot exercise those powers. Whatever your criteria for classification, whether it's population or density, it's bound to be an arbitrary one. We're talking about the principle of home rule. Whether you live in a city of 5,000 or 500,000 who is to say you should not have the same right of home rule?

Mrs. Orfirer - That, of course, is the crux. Should any municipality, regardless of size, be able to have a charter or be able to have home rule?

Mr. Helsel - I think we have all taken the position that it is possible to be too small to be a city, charter or noncharter. We ought to try to prevent incorporation of communities which now exist with 10 or 20 population. There is one village that doesn't have enough electors to fill the positions required by law.

Mrs. Orfirer - Don't you think something should be done about that?

Mr. Hessel - Yes, I agree that a municipality with only 6 registered voters ought not function as a municipality.

Mrs. Orfirer - How do you suggest we solve this problem in these tiny communities?

Mr. Donnelly - That raises the question--is it really a problem that has to be solved?

Mr. Flick -That is one of the important things; in our deliberations, generally, the 2 classes seem sufficient. We have a whole lot of other devices to solve problems, like the adoption of a charter, letting of contracts or cooperation with COGs. What is the problem that seems to indicate that a further classification system should be established?

Mrs. Orfirer - We have not proposed anything so far as either a recommendation from us or as response to the problems that we have had brought to us. We have looked at the Constitution section by section and determined what the possibilities are, to see whether things done in other states or recommended by students of political science are things that we want to do here. We wish to consider anything that is reasonable, and one of the reasons that we wanted to have this opportunity to speak with you is so that you could give us your experience as to whether there were problems in this area or not. We're not going to recommend changes for the sake of recommending changes. But we also are not going to close the board to anything just because it is a change or because it might make for some slight difficulty in the changeover.

Mr. Kelly - I think our consensus is that with relation to incorporation that the present Constitution gives the legislature the proper authority. The legislature has acted to raise the criteria for incorporation. The problem that exists with existing municipalities which are too small to be efficient might be met with some general law under the existing Constitution.

Mrs. Orfirer - You said something, Dale, about the Constitution could or should give the General Assembly the power to determine boundaries and make it clear that they have this but not have to do it but just to have the power to do it. Do you have any feeling about whether the Constitution should make this permissive or mandatory? I guess I'm thinking in terms of a boundary commission, not what you were specifically referred to so in other words you wouldn't demand that they set up some system, in other words, for handling boundary problems.

Mr. Hessel - State law has been amended from time to time in an attempt to take away the discretionary power from the commissioners so that their function is to simply make certain findings, such as the territory had a proper description, we met all the statutory requirements on signatures and then what is the effect on the people to be annexed. The legislature has set some guidelines for the county commissioners. If they set a boundary commission the legislature could do the same thing. There are both restrictive and permissive limitations on what they might do. And that's why I would not like to see a boundary commission mandated. We're constantly working with annexation laws trying to make them more meaningful. There's the merger of two communities, detachment problems and a number of other things other than annexation on which we currently work on by legislation. If there is sufficient power in the legislature to deal with the problems of merger and detachment, change of boundaries, etc.

Mr. Kelly - I think some additional wording could be put in Section 2 of Article XVIII, Constitution.

Mrs. Orfirer - To clarify?

Mr. Kelly - I personally feel that some of the existing municipalities which are too small should have something done to them. And I'm not sure now whether the word "incorporation" goes far enough. I would like to see the legislature have the authority to set up the machinery by a boundary commission or some additional criteria, that could be applied over a period. The legislature could do this by means of the local government fund incentives, etc.

Mr. Strozdas - I personally would like to see the legislature mandate the process. If it's just permissive I don't think the legislature would ever cope with the problem. Unless it is mandated we would have the same kind of problem that we have now with annexation problems. We're never going to get viable annexation laws as long as other units of government are politically more interested than we are.

Mr. Flick - I think the consensus reached by our group this afternoon was that we were more in favor of general control of mergers, consolidations, boundary changes, annexations all of those things by the establishment of possibly some commission by general law rather than by constitutional revision. We thought that this might help with some problems that we sometimes have with the approval by county commissioners.

Mrs. Orfirer - To get back to the problem of the noncharter municipalities being able to adopt changes without going through the charter commission route, I didn't understand something that you said, if I heard you correctly, Dale, about they should go to the legislature rather than the piecemeal approach.

Mr. Helsel - Well, if there are problems with the statutory form one ought to go to the legislature and say the statutory form isn't working here. How about some changes? And make them in the general law. Look at it this way, the smaller communities (we do have Canton but that is an exception) now have a body of law to find out what the procedures are. Now you start to have a referendum (piecemeal) you look to see how your referendum on procedure differs from the state. If you do it piecemeal it means a problem.

Mrs. Orfirer - Does it matter?

Mr. Helsel - It matters in finding out where you are. Even more important you've lost the purpose of the charter in the first place. This is giving the same power to the noncharter city as to the charter city. Why go through the charter commission? What's so important about the charter commission? Except that this is a group that looks at the whole government and says this is how we tie everything together. You vote on the whole issue. Now we're talking about arriving at the same position on an issue by issue basis--first we look at the president of council, the mayor, then we're going to talk about whether the law director ought to be elected or not. Over a period of time we've lost the coordination of your government.

Mr. Kelly - The same thing can occur once you have a charter. You can have 50 amendments.

Mr. Barrett - That's bound to happen, and I don't know how to prevent it.

Mr. Kelly - I think the feeling was that it is desirable in the first place to have some comprehensive thinking about procedures and structure, if you're going to make change you have a charter and a charter commission to begin with.

Mrs. Orfirer - I'm not taking a position on this but since you've taken one I'll take the opposite one and we'll see where we go. Supposing that there is just one specific aspect of the structure that the municipality at that time feels that they would like to change, and if we permit this by the kind of change that's been proposed then they will go ahead and make that change. Maybe another one will come along in two or three years. Then they'll change that one too. Do you think it likely if they get to the point where they are restructuring on a broad scale their structure and procedures or powers that they would not decide at that point to go the charter route? Would they say now the time has come when we're making this broad a sweep we'll take a total look at it. Or do you think that has to be mandated?

Mr. Barrett - I'm from a noncharter city. First of all we started out with a set of ground rules on how we run the city in the statutes. If there is something about those ground rules we don't like I think we would be immediately challenged should we go for a charter, or would we be better off changing the structure piecemeal? We at least have a set of ground rules to operate under the statutes and what we're saying is that with even a serious problem we ought to consider a charter.

Mrs. Orfirer - You don't have the kind of problem that one specific referendum might take care of?

Mr. Barrett - I don't know whether I can say that or not. In some small cities, perhaps it would. The point that we raised this afternoon--first of all there was an initial feeling that maybe we should have this provision--then given the fact that we have limited staff, we don't have, for example, a city solicitor--given those conditions we have something to rely on in the state statutes. If we have a problem with that system, then at that time we should consider a charter.

Mr. Gable - I think our approach was that there are alternatives that can solve the problem, short of making changes in the Constitution. One is in a noncharter city which is experiencing problems caused by the statutes under which they are operating but now they can go the charter route. The second alternative would be to address the legislature based on general law which amends, changes, or replaces the statutory powers, or a general law providing for an act of deviation by city.

Mrs. Orfirer - These are both very large scale and difficult procedures, or can be. Do you see any merit in making the situation more flexible? Giving further alternatives such as this?

Mr. Gable - Would you not agree, however, that if a change was made in the Constitution that the legislature would be required to pass a general law regarding the implementation of that provision, which also is a long process.

Mrs. Orfirer - I would have to defer that question. I don't know.

Mr. Kramer - It would depend on the provision itself. It could be written in such a way that it would be self-executing.

Mr. Carson - I think the example that we had taken was in a noncharter city. How large is a council in noncharter cities, seven? (Answer-it varies) I guess if a city thought that a larger council would be more suited to their needs a simple change like that which they could not do without going the full charter commission route and adopt a charter. Is there any reason to prohibit a city from making a minor change in its structure? For such a minor thing that all the citizens could readily understand? I think that was the simplistic way we were trying to raise the question.



Mr. Luebbers - I think they can do that now without a charter. I think there's a statute which authorizes a change in the number of councilmen.

Mrs. Orfirer - What is it that they can't do, raise salaries?

Mr. Flick - We've probably simplified our response to this, by saying that any non-charter city that has a problem or several problems should go by the charter route. Secondly, if they have a problem with structure, organization or procedures this can be taken care of by amendments in the existing general laws. This means that they have to go to the General Assembly. Our feeling is that the home rule provisions and the case law which have solidified, let's say cleaned up the difference between home rule and the statutory form of government is such that any other position that we might take might bring about a whole series of cases that would put the powers of large charter cities in question.

Mr. Kelly - We were considering general law that went further than that. That is if the legislature could by general law simply say that a municipality could adopt its own procedures and organization without a constitutional change.

Mr. Gable - They already have the power to allow cities to go their own way.

Mr. Carson - Also we started with the belief, and I think Ann's research has shown it to be true, that the drafters, we felt, of the Constitution who put section 2 and section 3 in there didn't mean to make the distinction that the courts have found between charter and noncharter cities. We were curious how this all happened and whether there's any need for using the full charter procedure for some minor changes. Really, I don't think we're talking so much about procedure as structure.

Mr. Gotherman - In the last 15 years we have had two expressions of concern that there ought to be some flexibility, the village administrator plan and the alternative plan for council composition. The people have to approve the alternative form of council and the council, by ordinance, creates the village administrator plan. These measures were not difficult to pass in the General Assembly.

Mr. Gable - The Constitution already provides the General Assembly with authority to provide statutory plans.

Mrs. Orfirer - Across the board.

Mr. Gable - But they could by general law establish a procedure.

Mrs. Eriksson - They already have of course, and there is a procedure there for adoption of one of the plans. I think a procedure for a referendum on individual questions would probably be no more difficult to establish than the other procedure. You mentioned an interesting possibility which was that the General Assembly could by general law simply say that a noncharter city could adopt its own form of government. Is that what you meant? And I wonder if that would, in fact, conform to the constitutional requirement that the General Assembly shall provide for the government of cities. Do you think that that would fit within that constitutional mandate?

Mr. Gotherman - It's never been done and you've never had a case so you can't be sure but I think the consensus was that probably it could. Not that it's very likely that you can pass such a statute.

Mr. Mann - One very practical problem we discussed regarding the variances that each statutory municipality might take. For instance, suppose they decided that they would take the option to change the procedure somewhat and a few years later they decided to change another procedure, most of your statutory provisions or your smaller cities--their staffs are relatively small--no personnel director, the city solicitor is not a full-time job, he also practices law, and council members and mayors come and go. If you make structural changes by passing an ordinance,--when many do not have their ordinances codified--it becomes a real problem trying to find out what the law is. Whereas if it is the state code, it is codified and the law as amended is readily available. If you're talking about an ordinance that was passed 5 years before and it is not codified maybe you do what the state law says but as the city solicitor you don't know that sometime back the ordinance was passed, so your advice is that we'll do it under the state code, not knowing of the locally adopted option. It's just a practical problem of finding out what the law is in a city where you don't have codified ordinances.

Mrs. Eriksson - This could apply to charter as well as noncharter cities.

Mr. Hessel - With charter cities it's easier to solve the problems. If one wanted to pay the council more I should think that the law could easily state that non-charter cities had the right to establish their own salaries. When you get to some of these questions as to who is going to be elected, how many times you are going to read the ordinance, who is going to be responsible to whom, etc. might not be as easy to handle.

Mr. Flick - Then it seems to me that you should be thinking in terms of a charter, a complete form of government.

Mrs. Orfirer - I think we understand your point of view. My very strong impression is that none of these areas are ones that you see any need for change in. Jim referred earlier as some of the things that you all did see as problems and I wonder whether you would like to discuss some of these, whether some of them have constitutional bearing.

Mr. Carson - I had a question. It was on the neighborhood question and I thought our gentlemen got off a little too easily on that. As Mr. Luebbers knows very well, the neighborhood question is a very vital one in Cincinnati and I'm sure it is elsewhere. One night last week I was at a meeting with 65 very articulate representatives of all the neighborhood councils in the City of Cincinnati and we had a very interested bunch of people whose views on how to give neighborhoods voices varied from a scale of 1 to 1,001, I would guess. We in Cincinnati are very concerned about whether or not the legislature itself has the power without a change in the Ohio Constitution to give a range of power to a charter city, or can a charter city exercise a range of powers to either delegate, allocate or listen to neighborhoods, or to create another neighborhood layer of government is the suggestion some people had.

Mr. Ostrum - What is a neighborhood council?

Mr. Carson - A neighborhood council is a nonpublic group of residents of the neighborhood and has no legal status. These groups are asking to be heard by our city councilmen and officials at city hall. My real question is is there any need for a change in the Constitution or do any of you gentlemen see any need?

Mr. Leubbers - We did discuss this at some length this afternoon. Neighborhood government probably means a lot of things to a lot of people. It seems to be the consensus of the group that as to powers of local self-government that a charter can take care of most of the things desired. There are limitations--tax and debt--controlled by the legislature.

Mr. Kelly - In section 2 couldn't the legislature by general law do about the same for noncharter cities?

Mr. Ostrum - What was the origin of the question? Didn't we have a professor here a couple of meetings ago who advocated that problems be solved at the lowest level in the state?

Mrs. Orfirer - That was part of it but there's also been a great deal of writing about this, a new movement now. They want to decide the things that relate to that neighborhood.

Mr. Pizza - But how far will they go? Is this an erosion of representative government?

Mr. Carson - At the Cincinnati meeting I went to I was very interested to find almost all of them seemed to feel that they weren't ready to ask any more than that either city council arrange some way to listen to them or for some city department to be set up to be a liaison with the neighborhood councils.

Mr. Pizza - You can listen to them. But once you formalize them you're laying the format for a sophisticated form of gang war.

Mr. Flick - Neighborhood government really gets you into the issue of wards for representation.

Mrs. Orfirer - Who was the neighborhood council president, a very articulate man who spoke when we were having our public hearings on regional government? And presented a point of view that was really quite valid. As I recall it, the city was taking over some of the property that they had just redeveloped in their particular neighborhood. I raise this to ask if there are not some legitimate functions that these neighborhood councils should be permitted to perform?

Mr. Strozdas - They are performing them now by virtue of their right to be heard.

Mrs. Orfirer - Isn't there a difference between being heard and making the determination yourself?

Mr. Strozdas - If you carry that to the ultimate let's assume that there's a 45-55 split in the neighborhood. We've got representative government now and it seems to me it's a matter of deciding how local is local government.

Mrs. Orfirer - Do you want to carry that down to the municipal level? You can say why should each municipality be able to do it differently why not just have the counties have the say?

Mr. Strozdas - If the counties had the authority I'm not so sure that that might not be the way.

Mr. Flick - What is requested? Are you talking about the power to establish police forces, a veto power on this that and the other thing by the neighborhood? The ability to borrow, to incur debt, the power to reallocate revenue? There are a lot of ramifications as to what this thing is that we're talking about.

Mr. Carson - The most liberal voice expressed at the meeting was suggesting that the city council should establish a procedure for recognizing duly established community councils, and they should have appropriated to them small sums of money to pay for office expenses. To require city councils or city offices to notify them of matters coming before them which would affect that neighborhood. And third to have council listen to them before a decision is made. Nobody suggested that any decisive power be given to them.

Several persons noted that, in some communities, there were demands that certain powers, such as zoning and police forces, be given to neighborhoods.

Mr. Donnelly - We have a lot of experience with community groups through Model Cities and other groups. We've found that the well organized neighborhood groups have used their ward councilmen. We also have a community division in our planning department which meets with neighborhood groups to get their input. Before plans are solidified for any project, a meeting is held with the neighborhood group, usually using the ward councilman. So we provide a vehicle for this sort of thing and I think that helps.

Mr. Carson - The question I was asking was not whether this is a good or a bad idea. I don't think we can say that the neighborhood voice idea is not upon us. Is there flexibility under the present Ohio Constitution if a city feels that it should establish such a procedure in its charter, can it do so?

Question: How did they do it in Dayton?

Mr. Gotherman - I think their city council simply took the necessary action, allocated money to neighborhoods and asked them how they would spend the money. I do think there was a clear consensus that, by charter action a charter city or by General Assembly action a noncharter city could do what they want to in this area, given the ability of the General Assembly to limit debt and taxing powers even of charter cities. If you wanted to give taxing powers to a district within a city, you would probably have to go to the General Assembly.

Mrs. Eriksson - Was that what you meant, Mr. Nelsel, by your opening statement when you said that restriction on taxation was one of the things that you would like to see something done about? You weren't referring to the preemption doctrine, were you? Would the uniformity provision be an additional constitutional restriction on this kind of thing or did you discuss that at all? (No) We're talking about taxation and the ability to levy different taxes within one taxing unit which presumably would still be the city.

Mr. Nelsel - We did say that you would have to be careful that you didn't incorporate within the city the tax enclaves in subdistricts. I would say that one of the things we all recognized was revenue sharing which could be distributed, without reference to taxation. We do need to discuss this whole problem--neighborhoods in relation to cities, cities in relation to counties, counties in relation to regional planning districts.

Mr. Gotherman - I think the answer to Ann's question is that obviously there are some problems that neither the General Assembly nor the charter commissions can cure.

Mr. Donnelly - In two districts in Akron they had special assessments. Because of social considerations different assessment rates exist on opposite sides of a street in a Model Cities area.

Mr. Helsel - There are many things you could do, streets, garbage collection. You could vary within a community just by using a special assessment power.

Mr. Flick - I think that Nolan raised two significant points. Can a city appropriate a sum of money to staff and that staff would determine what that community needed by way of programs? Two was that a general recognition that anything that occurred within the public body they would have an opportunity for input. Those are the two big things and it seems to me that both of these things can be taken care of locally either by charter or by ordinance. I think that the fact that we have appropriated money to health agencies--they are not city-operated health agencies--would be indicative of making moneys available for that kind of thing. That's aside from what these things might build up into. The auditing requirements, the political problems that might derive from mishandling of funds--those are another topic.

Mrs. Orfirer - I'll repeat the question I asked earlier. You raised some areas which you thought were of concern. Do they show a need for constitutional change? Are there areas where you gentlemen would like to suggest change, other than the indirect debt limit?

Mr. Helsel - I don't think we came prepared but we talked about the possibility of meeting again some time to cover such matters.

Mr. Flick - We would like to see you repeal the indirect debt limit.

Mrs. Orfirer - Perhaps something new which is not now in the Constitution? In your course of daily living with the problems are there problems that you feel need a constitutional solution?

Mr. Flick - Has there been any consideration given to the repeal of employee welfare, section 34 of Article II? Have you been discussing the limitation on the use of gasoline taxes?

Mr. Helsel - In looking at municipalities around the country one thing comes out and that's revenue sharing. The idea has been proposed that maybe something could be done to solve that problem and maybe pass the money back to the municipalities and let them decide what they are going to do with it. About civil service laws--we can change that through the charter. We do have a safety valve when we have a problem. So I can't say constitutionally that we see a need for change.

Mr. Flick - Sometimes I feel that we ought to have some kind of constitutional provision that prevents the state from imposing an expense or limiting a revenue, or reducing a revenue. Another think I think it would be wise to look into the ability to incur debt, pledging any kind of revenue. These are some broad areas that I think we would be interested in.

Mr. Gotherman - One of the problems we have had is that the Commission divided into committees with some overlap of subject matter coverage. There is interest in negating

the prohibition against lending of credit so municipalities may become more deeply involved in providing loans for rehabilitation of housing.

Mr. Flick - There needd to be some type of revenue sharing for taxes levied by the state or some removal of the preemption doctrine.

Mr. Helsel - Is there a question or interest in a provision on statewide transportation system?

Mrs. Orfirer - The question came about in terms of whether certain areas so vital now that they should be spelled out in the Constitution as a state obligation just as education is. This was the background of raising this issue.

Mr. Gable - They may be vital issues now but I don't believe that 30 or 40 years ago any of us would have thought of setting up a system of statewide transportation. A lot of functional issues may be very important now but may not be in the future. We don't see the need to add special provisions since the legislature has the authority to go into those areas.

Mrs. Orfirer - We're back to the same question which is when the legislature has the power but doesn't use it, would it be a good idea for us to mandate some action in the Constitution?

Mr. Donnelly - If the legislature doesn't see a need to act, they won't act.

Mr. Carson - Some of these gentlemen may not have known how we struggled over Article XII, section 5a. This came out of another committee and there were recommendations made on it to amend the section. It takes a 2/3 vote of the whole Commission to make any recommendation for change. The committee recommended that section 5a be amended by permitting highway user taxes to be invaded for other uses, by a 2/3 vote of the General Assembly. Someone else moved that it be amended to permit the funds to be used for mass transit. Another moved to repeal the whole section. Mr. Richley testified that he first was opposed to any change at all, then changed his testimony that he was willing to make some limited changes. We couldn't get a 2/3 vote for any one of these positions, which is indicative that there was no consensus and I wouldn't think there would be one in the legislature either.

Mr. Kelly - Was there a consensus that somehow highway funds could or should be used for other transportation purposes. And the differences were just on what basis?

Mr. Carson - We don't really know but I would think that by a 2/3 vote some kind of change might be made in 5a. But we couldn't get 2/3 vote for any one change.

Mr. Flick - My personal view on that is that there is a need to loosen up the current restrictions, at least for mass transit. I think this would be applicable to the energy crisis and a whole lot of other things. The automobile needs to provide some assistance in financing mass transit. I don't know that we ought to go any further than that, not to open it for any operating expense that somebody wants to spend the money on but, I think mass transit would be a worthy change.

Mr. Ostrum - When this was argued before the Commission, it was before the energy crisis became prevalent in everybody's mind. I bet if it came up today you might find more support for mass transit.



Mr. Flick - It is a rough row to hoe, no question about that. Not much support from small cities.

Mrs. Orfirer - Mr. Richley came up with a proposal which was that all transportation funds could be used for any form of transportation. Some of us objected to that on the grounds that it was really a further earmarking of the funds in the Constitution, which we wanted to undo rather than add more to, and that there was no insuring in that event that any funds would go into anything other than highways. It might be just taking more money for highways. It was worded that all transportation funds could be used for any form. It didn't say it had to be other than highways. The Local Government Services Commission just took a position favoring the Richley proposal.

Mr. Carson - This is not dead. We just didn't have enough people to vote on any one amendment.

Mr. Helsel - There are two problems. Right now, are we going to have enough money to pay the bonds anyway? With the fuel crisis, we'll get a decrease in the number of gallons sold and there has to be a decrease in the revenue to the state. Another example would be reduction of personal property taxes. A community which has high personal property taxes sustains a serious blow if those taxes are reduced and not made up some way. It may well be that that valuation is too high but when a legislature tinkers with that it seems to me that it is important that they should have a hold harmless clause to cities.

Mr. Flick - Like the homestead exemption a property tax roll back. At least we don't lose revenues that we had before.

Mr. Donnelly - You might also mention the unforeseen consequences of changes in the state statutes, like new responsibilities for prosecution of nonsupport cases under the new state criminal code.

Mr. Carson - Has anyone given any thought to drafting any proposal for compensation for lost revenues or new responsibilities?

Mrs. Eriksson - We walked about this in terms of the county, but were not able to decide how you could word such a proposal.

Mr. Gotherman - One of Dean Fordham's seldom discussed proposals would require city by city approval of legislatively mandated expenditures.

Mr. Kramer - I would ask a question on that point. As John says probably we could draft some broad language on that but it is disconcerting to think about all the implications of it. First, what happens when the General Assembly provides minimum standards for water purity and sewage treatment, etc. Then does each municipality in the state have a right to tell the General Assembly that we simply refuse to do it until you give us the money to do whatever you are demanding? Those are only two examples of limitless areas. We did struggle with this in connection with the counties and how do you go about determining whether the municipality really has the resources? And you get into arguments of whether you are providing more than you need in the way of certain functions and couldn't you take some of the money out of that to do what the state is demanding. That's the kind of argument you get into and that is the reason that we've abandoned it as something that's not really practical. Does the state have to provide you with the funds or the power to raise funds, or does it provide both or either?

Mr. Helsel - Every time you have an assessment this happens--there's always a little old lady on every street that can't afford the assessment, so what do you say to her? We don't like it when we are in the place of the little old lady but what can we do?

Mr. Kramer - That's one of the things that constitution drafters worry about because the consequences are really unforeseen.

Mrs. Orfirer - I surely want to thank you for coming tonight, and when we get to the indirect debt limit we will contact you. If you all would like to experiment with wording on this last item we would be delighted to reopen it in terms of municipalities because we recognize it as a problem.

The meeting was adjourned.

Constitutional Revision Commission  
Local Government Committee  
January 30, 1974

Summary

The Local Government met at 9:30 on January 30, 1974 in Parlor 7 of the Neil House.

Present were Chairman Orfirer, Messrs Carson and Ostrum. Also present were Professor Vaubel, Mr. Gotherman, and Mrs. Mills (LWV) and staff Kramer and Eriksson.

Mrs. Orfirer - I think the time has come to reach some hard decisions on home rule powers. It seems to me that we have probably three choices: one would be to make no changes for the following reasons: the Municipal League persons, from their experience, feel that no changes are necessary and see some dangers in making changes, and the only source so far to request changes has come from some of the legislators, such as Mr. Fry, who feel that they would like home rule strengthened in the non-charter cities rather than having the problems brought to them in the legislature. A second choice would be to reach a conclusion, if we did, that we think expanding the power of noncharter cities is worthwhile and to propose it to the Commission and let the Commission make the decision. The third alternative is to submit the draft or some version of it to the Commission without a recommendation, and tell them that this is the result of several months of work and investigation on our part--that we feel this draft has merit that we wish to submit it for their discussion and study and determination without a recommendation from us since we don't feel in a position to argue for or against it.

Mr. Carson - I think that we should recommend to the full Commission that no change be made but include in our report the possibility that the committee had considered but not implemented because of no support, really opposition to it.

Mr. Ostrum - I agree with Nolan that I feel that we've got an obligation as a local government committee to make a recommendation, and not dump the whole thing on the Commission. Therefore I don't think that the third alternative is very sensible. As a practical matter I think we should go with the first alternative.

Mrs. Orfirer - Then I think we should consider that decided. We do have a redraft which as Nolan suggests, could be included in the report as something we considered but did not recommend. There may be flaws and I would like comments on it even though it is not a committee recommendation. I wanted committee members and Gene to comment on it, and see whether it needs further discussion here before it's adopted and included into a report.

Mr. Carson - I think it is quite good and I was pleased that it was brief. I had thought it might take three or four pages to do this.

Mr. Kramer - I would want to suggest some redrafting. It's more a matter of language than substance but I would need more time to think about it.

Mrs. Eriksson - I would also like to ask John Gotherman for his comments, with the understanding that he is not supporting the idea.

Mr. Gotherman - It is unfortunate that this draft wasn't available as a specific approach to what the questions indicate in a broad general way before we had our committee meeting to deal with that subject matter.

Mrs. Eriksson - This is not substantially different from the draft that you had before, and that we discussed at the last meeting. The main difference is that it separates

charter and noncharter cities.

Mr. Gotherman - You can't in 5 or 10 minutes digest the impact of this kind of provision

Mrs. Eriksson - That's why I would welcome your comments when you've had time to look at it.

Mr. Gotherman - But I do think it's unfortunate that if you had a specific proposal that it wasn't available.

Mrs. Orfirer - John, I would like to answer that because that comment disturbs me. You've had plenty of opportunity for any changes in those drafts that you would have liked to make and to have discussed them with your people yesterday and asked them whether they wanted to comment on it or suggest any changes themselves. This draft was not submitted to you because the concept was and if you were not going to report the concept and the aims and the purposes of the proposal and if you did not have any feeling that change was necessary, there was no need to get into specific wording. The door has not been closed and if you would like to pass this on to your committee we would be more than happy to have it done. We'll be in operation for a couple of years yet. No doors are closed. We would be very pleased to have you send this out if you wished or work with Gene and Ann on a modified version of it and send that out to your people for comment. If you want to come back alone or with them and reopen this subject we would be more than happy to have it done. We will leave it then that this draft will be resubmitted at the next meeting, to be included in the report but without a recommendation.

Mr. Carson - May I make a suggestion? We've got so much to do in this Commission. We are talking about a provision for historic approach and I wonder if we should take staff time to polish something that we're not going to recommend.

Mrs. Orfirer - I think it should be kept simple but anything that is to be a part of a permanent record should be something that can be implemented. We either submit language which we feel can stand up to scrutiny or otherwise submit a concept and not try to put it into draft language.

The next item of business is the idea of stating clearly in the Constitution that the General Assembly does have the power to do something about the boundaries of municipalities--annexation, merger, dissolution. One proposal is a boundary commission. It's my impression from the meeting last night that this subject, all agreed, needed some clarification. One proposal is that it should be stated in the Constitution that the General Assembly has the power to dissolve or alter the boundaries of municipal corporations but not state specifically how they should go about it. One area we ought to pursue and make some decisions on is this idea of stating something in the Constitution about the creation of a boundary commission. John Duffey brought this question up earlier. He did a considerable amount of work on it and recommended it to the Local Government Services Commission. He has turned all of his materials over to us for whatever help that they might be in the hope that we would do something.

Mrs. Eriksson - Briefly, this is the problem: The Ohio Constitution says that general laws shall be passed to provide for the incorporation and government of municipal corporations. "Incorporation" is the only word in that section which indicates either the formation or alteration of whatever power the General Assembly has, other

than its inherent legislative power, to deal with municipal boundaries. There are some doubts in the minds of some as to how far that power can be carried. It seems to me there are basically two choices--one is to add some additional words in that section which would make clear the General Assembly's power, by general law, to provide for other aspects of the formation and deformation of municipal corporations. The other would be to specifically provide for either a boundary commission or authority of the General Assembly to create a boundary commission. You could also permit the General Assembly by special law to act on municipal corporation boundaries, and then there's a variation of that, which is similar to the county provision, that the special law which would be subject to a referendum in the area affected. There is substantial feeling against the General Assembly acting in this area by special law. The memorandum you received simply went into the boundary commissions that have been created in other states. None of these boundary commissions have the authority to impose boundary changes on unwilling jurisdictions. They can initiate proposals but they do not act as a final judge in the sense of ordering changes which are resisted. It would have to be by vote, if you're talking about a municipal corporation that has acquired its incorporated or consent status. For the most part, they have affected special districts and have been instrumental in consolidating or eliminating a lot of special districts which have overlapping boundaries. It seemed to me from the discussion last night that some of the people preferred to add some additional words to section 2 to make it clear that the General Assembly can pass laws concerning merger and annexation and some of the people thought that a boundary commission would be a good idea but it should not be put in the Constitution.

Mr. Gotherman - Our consensus was that the Constitution should be clarified, concerning the legislature's power but no particular direction should be pointed in the Constitution, either by requiring it or permitting it specifically. A lot of people seem to think that a boundary commission might be the answer but they are not convinced. That's something that could be open to a prolonged legislative process.

Mr. Ostrum - I would be interested in any example you might have of where there's been some problem existing, whether there's a desire to correct it and what were the obstacles either constitutionally or statutorily.

Mrs. Eriksson - Mr. Kelly spoke up most strongly, having mind, I am sure, some of the areas in Cuyahoga county. He said that he felt there was a need to mandate mergers of smaller municipalities, particularly in the high dense population areas.

Mrs. Orfirer - Some of the examples you know about were all the attempts at metro government in Cuyahoga county. It has not been possible to be accomplished. We voted it down several times.

Mr. Kramer - I'm not really aware of any substantial doubt as to the power of the General Assembly to deal with the kind of annexation and merger questions that come up now. I think it was clearly established in the Beachwood case, at least by indication, that questions of annexation and all the matters of changing municipal boundaries are a power of the General Assembly.

Mr. Ostrum - What would have to be done right now under the law if the City of Cleveland decided it wanted to take Shaker Heights into the city of Cleveland?

Mr. Kramer - There are procedures that are established already.

Mr. Ostrum - Could it be done without Shaker Heights wanting it done?

Mr. Kramer - No. It couldn't be done involuntarily.

Mr. Ostrum - Is there anything being suggested here that would permit it to be done over Shaker Heights objections?

Mr. Kramer - I think that's the question. Before you start deciding what has to be done to the Constitution you have to decide what it is you think has to be done. If anything could be done under the existing power, under the Constitution, it's a matter of removing power from the Board of County Commissioners to deal with annexations which many municipal officials would like to see done, and put this into a boundary commission established by the state--or you could have regional boundary commissions--all sorts of things could be done, but not requiring any constitutional change. It's probably only where you would get into the area of involuntary boundary changes that you might run into a constitutional involvement and I am not positive that that's the case.

Mr. Gotherman - We think the General Assembly has the power to do whatever they want to do. But if there is substantial doubt that that is the case, we would support clarification.

Mrs. Eriksson - The basic thrust of the Alaska provision is the ability to mandate a change of boundaries. This I think is the basic issue. Is this a power which is desirable for the General Assembly or a body created by the General Assembly?

Mrs. Orfirer - There are all kinds of problems with the boundaries. One that we were discussing in the other commission is the problem of townships, of municipalities annexing portions of townships and leaving the rest and I guess this also happens with municipalities. They don't have to take the whole thing so they can take a very desirable part and leave the rest.

Mr. Kramer - As to municipalities--if you're going to merge with another municipality, you have to take the whole municipality. You can annex a portion of a township.

Mr. Ostrum - If you want to annex a whole municipality, it can't be done involuntarily?

Mr. Kramer - The statutes do not permit it. We don't have any case law and we don't really know if it would be possible for the General Assembly to provide for annexation without the consent of the people living in the territory. Judge Duffey argues that the General Assembly does have the power, in fact, to unincorporate territory. If it can do that, it probably can provide for the involuntary annexation. That is an area where there is some real doubt--a dispute over what the existing powers of the General Assembly are.

Mr. Carson - I can give a good example. The City of Cincinnati wanted to annex an area of about 50 acres in an adjoining township. This plot encompassed almost all the industrial acres in the township. There was only one person residing in the 50 acres. And that one person signed a petition--no vote was required and the final decision was made by the county commissioners.

Mr. Gotherman - There are two methods of annexation: one involves the petition by a majority of the owners, not in the township as a whole, but in the area to be annexed.

Mr. Kramer - It used to be residents but is now owners.



Mr. Gotherman - There is no statute in existence today that authorizes the annexation of a part of a municipality, although it used to be possible for a city to annex a part of a village. That statute was repealed last year. The second method of annexation is where the municipality initiates annexation of an area by petition and in that case you have to have a vote in the entire unincorporated area of the township, not just the ~~area~~ area proposed to be annexed but the full unincorporated area of the township. That's when the city petitions in its own name for annexation. This is never used because there is no way to convince just the people who live in the unincorporated area of the township that they should give up a part of their township. The main annexation procedure is to have a majority of the owners of land petition the county commissioners for annexation--the commissioners conduct a hearing and make a series of findings and either allow or disallow it, based upon those findings.

Mrs. Eriksson - The statute that used to provide for annexation of part of a village, what was the procedure?

wishing to be annexed

Mr. Gotherman - The residents of the area/could petition to the county commissioners to be annexed to the adjoining city.

Mrs. Eriksson - It didn't require any action by the village council?

Mr. Gotherman - No. It was just between the inhabitants of the area and the annexing city.

Mrs. Orfirer - Somewhere along the line we are going to have to come to grips in this state with the problem of the good of the majority. I don't know whether it's here and now or not but somewhere somebody is going to have to start making the decisions, such as a boundary commission. I don't think the General Assembly is ever going to be in a political situation where they can take this bull by the horns, and fight off the kinds of pressures that they would be subjected to.

Mr. Kramer - The problem we're talking about is not the garden variety of annexation. The problem already exists. There are municipalities in the state now that could not be incorporated under the present statute--they don't meet the minimum standard--so we're not talking so much about the ordering of boundaries. It isn't very accurate to talk about boundaries. You're talking about the size and composition of units of government. Right now there's not much question that the General Assembly could create a boundary commission to deal with questions like what is an appropriate area for annexation to make the kinds of determinations that county commissioners make now. You might even give more power than the county commissioners have. But we have to consider other things such as forcing the consolidation of several municipalities into one or forced annexation of township territory and municipalities, or dissolution of municipalities that cannot form a government.

Mrs. Orfirer - What do we do about the problem of these municipal corporations with 10, 20, or 200 people?

Mr. Kramer - There are some that have many more people than that but under existing corporation laws they do not have the population density or assessed valuation which has been determined as requisite for initial incorporation.

Mrs. Orfirer - Could the General Assembly today dissolve those in your opinion?

Mr. Kramer - I don't know.

Mrs. Orfirer - Where we don't know, I think we should say something about wanting it a certain way. There's a difference between making it clear that either a boundary commission or the General Assembly has the power to do something about incorporations that should not exist and the grant of power either to the General Assembly or a boundary commission to take two viable corporations and say they have to merge.

Mr. Gotherman - Today you can't incorporate within 3 miles of an existing corporation without their consent but Shaker Heights and all those communities with populations of 70, 80 or 100,000 population--they're right together--there's no way to straighten that out.

Mr. Ostrum - Historically, when did this requirement come into being?

Mr. Gotherman - 1967, I believe. There was a desire to incorporate Valley Hi, so they put the loophole in which permits incorporation of ski resorts and resort areas with fewer people than you would need for a village so even now you have one loophole that exists and that is the resort areas. They needed police protection, fire protection and similar things.

Mrs. Orfirer - We know there's a division of opinion on this but if it's something that we feel ought to be done, I think we ought to say so.

Mr. Gotherman - But you don't necessarily have to create a boundary commission in the Constitution.

Mrs. Orfirer - No, just make sure that somebody has the power. Let's start with whether it is your feeling that you want either the General Assembly or a boundary commission or someone to be able to dissolve small corporations or to provide for mergers. Let's begin with what we are trying to accomplish.

Mr. Carson - My view, I suspect, is at variance with those on the committee. I see no good necessarily to the big getting bigger. This committee recommended and the Commission adopted a proposal permitting county charters by a simple majority vote which could do all the things which could be suggested by this proposal. It seems to me that there is not a lot of value in eliminating large or small units of government when you have a vehicle whereby the powers of that government or the services they perform can be handled on a broader basis. You can leave the governments there but you can add to, take away or change their powers, as I understand it, by a county charter, by a simple majority vote which this committee recommended and the Commission adopted. I think this is a doubling up of ways to do the same thing. I don't see any necessary benefit in just eliminating or giving some super group the power to say this little group of people who have been in this municipality for 100 years must now become a part of a large city.

Mrs. Orfirer - What would be the advantages of being able to force a dissolution or a merger?

Mrs. Eriksson - A county charter could, in fact, assume whatever powers the local governments are performing. But some of the small municipal corporations are unable to find enough people to elect the requisite officers required by law. Now maybe there's nothing wrong with that, but it would seem to me that there must be a lack of performance of whatever the duties are that are imposed by law, on these officers.

Mrs. Orfirer - Would they just revert to being part of the township?

Mrs. Eriksson - If you're just going to dissolve them and not merge them with somebody else, they would then be part of the township.

Mr. Kramer - Assuming that there was still a township. Some of the townships have been abolished because all their territory has been incorporated, so there would have to be some statutory provision for what happens to this territory if there is no township.

Mrs. Eriksson - Then it would be adjacent to a municipal corporation which may or may not want to take it in.

Mr. Kramer - Most of that would be a statutory problem.

Mrs. Eriksson - Perhaps my concern is not a real one. It just seems to me that if you are unable to fulfill the statutory duties of electing officers there must be some lack of performance.

Mr. Carson - Under the county charter provision could not the little tiny ones be totally absorbed by the county?

Mrs. Eriksson - Certainly all of their powers could be. I don't think the county charter itself would provide for the going out of existence, unless the county actually became a municipal corporation. That is possible but that would mean that all within a county.

Mr. Carson - Maybe the county charter provision could be changed to permit the total absorption by the county of the small municipalities. What I'm really trying to get at is--I believe you all think that the county charter provision should be more readily available for use. We're talking about a state boundary commission with perhaps power to obliterate municipalities. Who is better prepared to determine what should happen in a particular local area than the people of that county because if there's a little municipality or a series of them and they should be disbanded or merged shouldn't the people of that county be interested in that?

Mrs. Orfirer - It occurs to me that there are problems with this. What was the situation at the public hearing in Cleveland when someone came in about the water problems in this little area that was not incorporated and nobody could solve their water problems?

Mr. Kramer - Rock Creek is an incorporated village but it is so small and lacking in financial resources.

Mrs. Orfirer - What would have solved their problem? If Ashtabula county had a charter would that have solved Rock Creek's problems?

Mrs. Eriksson - If the charter provided for the county to perform that particular function.

Mr. Kramer - The county can establish sewer and water districts and with the consent of a municipality can include the territory and can provide service there even without a charter. It's not a political problem, it's an economic one.

Mrs. Orfirer - Why did Rock Creek have no recourse, to anybody?

Mr. Kramer - In general there is nothing in the statutes which makes it absolutely impossible for any area to get sewer and water services. But you have to have enough customers to operate a utility.

Mrs. Orfirer - There may not be anything that makes it impossible but a Rock Creek situation should not exist. It doesn't have enough population, or money or resources to take care of itself. It isn't enough for the county to care but the answer is that it be merged.

Mr. Kramer - Merged with what?

Mrs. Orfirer - What would be the answer governmentally for a Rock Creek?

Mr. Kramer - There was not a large enough concentration of people with sufficient economic resources to provide necessary services for themselves, they either do without or some larger governmental unit has to subsidize them.

Mrs. Orfirer - What would you compel them to do?

Mr. Gotherman - The federal government should mandate that the state of Ohio pick up the cost of the water pollution problems that the people cannot support. The county commissioners did not do anything because there are not enough people in the area to raise the revenues to build the sewer. The problem is always the same-- whether there are enough people there to build the facility and pay off the debt.

Mr. Kramer - Another approach is the one that the federal government has taken with Appalachia. The people want to stay there and the way to help is to provide assistance to them so that they can develop their own economy. It's not just a question of merger with a municipality and extending municipal services because the municipality has an obligation to its citizens for services. They may have some objections to subsidizing another unit.

Mrs. Orfirer - Maybe they have some objections and maybe it's important that they be made to do it for the general welfare. It's conceivable if Rock Creek were next door to a viable municipal corporation, regardless of the fact that these 200 people might want to continue their separate rural existence, they could be merged and get these services. But their answer is that the county or the state ought to come in and provide all of these services for them. Do you have the right, if you prefer to live this way, to demand that special services at a great economic cost be put in here so you can continue to live this way?

Mr. Carson - The county charter section says "Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, or of all or any designated powers vested by the Constitution and laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in either 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 powers so vested in the county." This can be done by a simple majority vote of the whole county. Who are better to determine what should be done in Ashtabula county than the people of the county? Maybe there are 3 or 4 such areas. They should be administered by the county and the municipal powers of those 3 or 4 should be taken away and vested in the county. Don't you have a so-called boundary commission available already? It wouldn't be impossible to amend this charter provision and put a deincorporation power in the charter. It doesn't necessarily say that.

Mrs. Eriksson - The 200 people in Rock Creek are still subject to the mandate of the law that they must have certain sewage disposal facilities. The state is certainly going to have the power, if there's a question of health or pollution, to mandate them.

Mr. Gotherman - If they<sup>are</sup>/discharging into navigable water, some villages faced with that kind of a problem may very well utilize corporate surrender sections of the Revised Code and let them place the order against the county. That doesn't solve the problem. And some villages may do that if they cannot comply with an EPA order.

Mrs. Orfirer - Our solutions come about through the back door.

Mr. Gotherman - But you can't solve that by a political decision because even the state of Ohio which obviously has more resources than any county or any city isn't putting a nickel into this. Some counties are not able to get together the necessary money.

Mr. Kramer - As a practical matter, too, it may be that state government will find more pressing and immediate needs and will overlook some of these areas.

Mrs. Orfirer - Even though we support the county charter idea, supposing that we don't get a charter? Are these problems great enough that we need to do something which directly leads to dissolution or merger?

Mr. Ostrum - If I had to take a position right now, I would tend to feel that maybe just adding a few words to the "incorporation" words indicating merger and dissolution would be wiser than mandating a boundary commission at the state level.

Mr. Kramer - The Minnesota provision is very similar to our existing language and would probably go a long way toward clearing up any problems. I think we would still be left with the question whether there is something in home rule which would preclude the General Assembly from applying dissolution without the consent of the inhabitants. It seems to me that as a political matter it will be a long time before the General Assembly would attempt to do that anyway. You would add to section 2 the words "consolidation, division, dissolution".

Mrs. Orfirer - And it leaves it up to the legislature whether they want to provide for a referendum.

Mr. Kramer - Right, just as with annexation.

Mr. Carson - If you add those words I trust that the legislature could create a state boundary commission.

Mrs. Orfirer - What about putting in the words "including creating a boundary" which doesn't make anything happen but calls something to their attention?

Mr. Kramer - It only adds a name. It doesn't tell you anything about a boundary commission or what powers it has. The boundary commission would be an administrative body which would operate under the law.

Mrs. Eriksson - If you want to give a boundary commission particular powers then you ought to do that in the Constitution.

Mrs. Orfirer - I think when you discuss boundary commissions there are two possibilities: one that it would be a recommending body and the other would have enforcement powers. How does Alaska do it?

Mrs. Eriksson - It provides for the Boundary Commission in the Constitution and gives it power to make changes.

Mr. Kramer - As long as the legislature enacts the law, declares the standards and procedures under which it can be done it would be very much like the operation of the Public Utilities Commission. It has broad powers under a grant from the General Assembly, not in the Constitution. As long as the legislature has the power to provide for these things I don't have any doubt that it could provide for a boundary commission and establish its powers under which it could operate.

Mrs. Orfirer - Let us prepare a draft adding these words and send it out to the rest of the members of the committee and ask for their reaction to it.

Mr. Carson - There is another alternative. The alternative is rather than give this power to the legislature, which is what this would do, the Constitution could give this power to the counties. For instances, here is a county charter that has a bad name historically--this may not be the solution--you could add a new section in the Constitution whereby the basic document confers the powers to the people of Cuyahoga county or Ashtabula county to create a boundary commission either by action of the county commissioners or by a vote of the people or however you want to do it. That commission can recommend what needs to be done with respect to the Rock Creeks of Ohio by vote of the people in that county. It would not be tarred with the county charter brush because it would be a new section. It would be called local or county boundary commissions. A recommendation from that vehicle could relate only to a Rock Creek, you wouldn't have to have the whole county. I don't think that possibility has been discussed.

Mr. Kramer - Isn't what you described what the legislature could do under this language or possibly could even do now?

Mr. Carson - It seems to me by and large that these are decisions which do not affect the state as a whole but basically it affects the people in a local area.

Mr. Kramer - Our experience so far has been with respect to the question of annexation. The General Assembly has left this up to local determination. They never created a state annexation board. This kind of change would really continue what we have had and leave it up to the General Assembly as to whether they should be done locally or on a regional or state level, rather than putting some direction in the Constitution as to whether it should be state or local.

Professor Vaubel - I think Nolan is suggesting giving law-making powers to counties or local boards, instead of giving it to the General Assembly. The local board would enact a law for their county.

Eriksson - Wouldn't you still need some state standards? I am thinking particularly of dissolution. If we have created state standards for incorporation wouldn't it be logical to have some kind of standards for dissolution?

Mr. Carson - We've said that if the people in the county vote on it you can take all the powers away from a city regardless of size, or a village, without any standards being imposed by state law. You could take away all the powers of a city like Cincinnati under a county charter which so provided.

Mrs. Orfirer - But it is a constitutional duty of the state to establish statewide regulations concerning incorporation of municipalities and they should do the same



in dissolution. In the case of powers, cities already have them from the Constitution.

Mrs. Eriksson - In case of the powers, the county could take away the powers of Cincinnati but what those powers are is already determined. The powers are derived either from the Constitution through the charter or from state law. Perhaps just using your idea but providing for some standards perhaps we could provide for such a boundary commission at a local level and still provide that whatever standards are applied could be enacted by general law.

Mr. Kramer - I don't see putting anything in the Constitution which should and can be handled by the statutes. The General Assembly has used the commission approach, because the board of county commissioners is a boundary commission.

Mr. Carson - What you are proposing is that you think it best to give the legislature the power to enact a law to deincorporate municipalities under a certain size or to merge them. They could create a state commission which would mandate this. You're saying that's much more desirable because the legislature hasn't ever acted very irresponsibly so far, so they probably won't. But I think the question is, should that power be in Columbus, Ohio or in the area where the people are affected? It's one thing to give the municipalities the power to incorporate and I think it's another to take it away from them without their consent.

Mr. Kramer - We do of course have the possibility of changing the county boundaries, which is a further aspect of the complication.

Mr. Carson - Didn't the alternate forms bill permit cross county lines? We have grappled with that in the statutory law.

Mr. Gotherman - I think it could be handled but it would be a complex subject matter but I agree that this sort of thing should be in the statutes.

Mr. Kramer - I think there would be a great deal of opposition around the state this time or any time in the near future to a statute which would give extensive powers to some state commission to provide for dissolution without the consent of the people in the municipality. I also think the General Assembly could pass something like that only if the people think it's needed.

Mrs. Orfirer - It's the same argument as what you all convinced me of earlier--that you don't want to write in a constitution that it has to be done by a boundary commission. John and Gene are saying now that they don't want to write in the Constitution that it has to be done by a county boundary commission.

Professor Vaubel - If, however, the committee believes that the boundary commission is the modern approach to the problem, the possibility ought to be considered of putting it in the Constitution to indicate which way you think things should go.

Mrs. Eriksson - To the best of my knowledge, however, Alaska is the only one that has any provision like this in the constitution. So what we're really talking about is the language in the Minnesota Constitution which would add essentially "dissolve or change boundaries" or words like that to the Ohio Constitution.

Mr. Kramer - A state like Ohio where the damage has already been done has a much different problem from that of a state like Alaska. Unless we could show some

really compelling need to put in the Constitution a boundary commission it's up to the General Assembly. I think it is clear from the discussion that most of us just don't know exactly what a boundary commission should do.

Mrs. Orfirer - I'd like some simple addition of words to be put in section 2 and sent to members of the committee. We'll come to some kind of decision at the next meeting. At the beginning of this memorandum on municipal corporation boundaries the point has been raised in the second paragraph there is no provision for direct incorporation of cities, only villages. Should something be done about this?

Mr. Kramer - It's a statutory problem. The General Assembly has done that and just never changed it. They have full control over incorporation and annexation. No reason why you can't incorporate as a city with over 5,000 population, if provided by statute.

Mrs. Orfirer - It seems to me that, as we perceive constitutional changes, we have come across many areas where we feel that there are statutory changes needed. Would we be out of line to make certain statutory recommendations too?

Mrs. Eriksson - The mandate to the Commission is to recommend changes in the Constitution but there is nothing prohibiting from recommending changes in the statutes.

Mr. Kramer - The committee could say this is the problem, we have considered it. No change in the Constitution is required but it could be changed by statute.

Mr. Gotherman - If you recommend legislative solutions then I think you almost have to start having hearings on what the solution should be. Once the Commission recommends something to the General Assembly it becomes of greater significance than if a member introduces a bill.

Mrs. Orfirer - The legislature will hear people if a bill is proposed but I don't think we have to have hearings. We might start keeping track of some of these things. Anything else that's related to this subject matter?

It was agreed to begin the discussion of the indirect debt limit at the next meeting.

The meeting adjourned until Monday evening, February 18, at 7:30 p.m.

Summary

Present at the meeting on February 18 were the following committee members: Mrs. Orfirer, Chairman, Mr. Carson, Mr. Ostrum and Mr. Heminger. Staff members Kramer and Eriksson were present. Also attending were Mrs. Mills, representing the League of Women Voters, Mr. John Coleman, Executive Director of the Ohio Municipal League, and Mr. Ed Loewe, of the Chamber of Commerce.

The first item on the agenda was further discussion about possible changes in Section 2 of Article XVIII to clarify the authority of the General Assembly to deal with matters such as dissolving municipal corporations and mergers, consolidations, and alterations in boundaries. A number of possibilities had been discussed at the previous meeting, including the creation of a State Boundary Commission, but there was general agreement that such a Commission should not be created by the Constitution but could be created by the legislature if that were determined by the legislature to be the best method of handling these matters.

A draft was presented to the committee to add the following words: "consolidation, division, dissolution, alteration of boundaries," after the word "incorporation" in Section 2. After discussion, the committee agreed to the draft. Mr. Carson noted that since there were already laws providing for annexation, merger, consolidation, and detachment of territory, the General Assembly would not have to pass laws in these areas. It was agreed that there are no laws presently providing for dissolution of municipal corporations, and that laws are probably needed in this area, particularly in view of the statements at the previous meeting that some municipalities exist which do not meet present incorporation standards.

Mr. Carson then reviewed the problem of the indirect debt limit, which results from Court interpretation of Sections 2 and 11 of Article XII. This problem had been discussed by the Finance and Taxation Committee, of which he was chairman, which committee agreed that, because of the new proposal for state debt to be incorporated in new provisions in Article VIII, the reference to the "state" in section 11 should be deleted, and the problem of the indirect debt limit thus became a problem solely of political subdivisions. He explained the nature and extent of the problem, and referred to a memorandum which was distributed to all members. He noted that charter cities could, by charter, authorize the levy of taxes beyond the one per cent (statutory 10 mill) limit for debt purposes, and stated that the Finance and Taxation Committee considered whether or not the general assembly might not be able to authorize a similar authority for noncharter cities. Mr. Kramer stated that such authorization might not be in accord with section 5 of Article XII which requires the stating of a purpose for each tax levy. The matter was left unresolved.

A draft was then presented to the committee which would replace existing section 11 with a new section 11 of Article XII. The draft would permit political subdivisions to provide for the timely payment of debt by taxation or "by any other means by which such subdivision is authorized by this constitution or by law to obtain moneys for such purposes . . ." The present section requires the levy and collection, annually, of taxes. Mr. Kramer discussed the draft and gave his opinion that it would not permit any subdivision to go outside the one per cent limit (statutory 10 mill limit) without a vote of the people. Mr. Carson suggested that this prohibition be made explicit in the draft.

After further discussion, it was agreed that the draft would be submitted to various bond counsel and an effort made to obtain underwriters' opinions, if possible,

as to whether the proposal is acceptable and would not adversely affect the credit rating of Ohio municipalities. The draft will be considered again after these opinions are obtained.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
April 17, 1974

#### Summary

Present at the committee meeting on April 17 were committee members Carson and Wilson, staff members Kramer and Eriksson, Ms. Cave of the Ohio Municipal League and Mr. Loewe of the Chamber of Commerce. It was announced that the chairman, Mrs. Orfirer, was ill.

The first item discussed was the preliminary draft of Section 11, Article XII, dealing with the indirect debt limit, which had been discussed by the committee at a prior meeting.

Mr. Kramer - We asked for the reaction of bond counsel to this draft. One firm indicated that the draft would overcome the constitutional problems of the indirect debt limit, while another firm expressed some reservations about its effect on the quality of general obligation indebtedness. I have responded that the proposed amendment would not make any change in the existing situation because the uniform bond law contains the same conditions which create the indirect debt limit and changing the constitutional provisions themselves would make no automatic change in the law. Therefore, it is difficult to see how the amendment could weaken the security of general obligation debt. When statutory implementation is pending, perhaps statutes can be drafted to apply only to the limited number of municipalities that have problems with the indirect debt limit. It may be impractical to think about doing this for counties and school districts and others which rely largely on the property tax. Only municipalities which have sources of large amounts of funds other than from the property tax might be treated differently from the way it is done now, retaining the property tax basis for all but exceptional cases. Generally, I think that I can report that from at least 2 of the 3 bond counsel in the state, the opinion is that this proposal would not adversely affect the quality of the bonds. The implementing statutes would, of course, have to be examined very carefully.

Mr. Carson - Do we have assurance that people who market the bonds don't feel concerned about it?

Mr. Kramer - It is difficult to approach the rating services because we are asking a hypothetical question, and might not get a meaningful response. Legal counsel feel that the bonds, even after the adoption of such an amendment as this, would have the same security and be issued under the same conditions as now as long as there is no change in the uniform bond law.

Mr. Wilson - The real question is whether they can be sold at the normal price.

Mr. Kramer - The bond market is extremely conservative. It would not be desirable to take the chance of an impression being given that somehow the quality of Ohio local government debt is being impaired or weakened in any way by the adoption of a constitutional amendment.

Mr. Wilson - When you get down to it, all bonds are based on the full faith and credit of the municipality. Even if revenue bonds fail, you are still not going to default and let someone take over your utility.

Mr. Kramer - But revenue bonds still sell for a higher interest rate because you don't have that absolute security and the ability to mandamus revenues.

Mr. Wilson - We have no cases of an Ohio municipality defaulting and someone taking over a utility.

Mr. Kramer - The market is very technical, though, and there are still municipalities that are paying the penalty in higher interest rates even now for defaults during the depression.

Mr. Carson - I think we agreed to put some additional language in the draft. Has that been done?

Mrs. Eriksson - No. We were waiting for these responses before presenting another draft to the committee. The committee agreed to the addition of some language that would, in effect, say that this section does not authorize going beyond the 1% unvoted taxes restriction in Section 2.

Mr. Carson - When we worked on the debt proposals, we felt very comfortable that we would be able to maintain the high quality of bonds that Ohio has had. I had hoped that we could do the same thing here, but we shouldn't wait longer for responses. If someone feels there is a problem, that can still be corrected in the Commission. I think the language is good and everyone that I've talked to does, and I think the Municipal League people do too. It is my feeling that we should move this along.

Mr. Kramer - The statutory implementation is the really difficult problem and the constitutional language is only removing a barrier to statutory provisions which could handle this problem, preferably on a limited basis. There seems to be some question about the desirability of changing all local government debt provisions, where only a few may need it.

Mr. Loewe - Has the advent of federal money, especially in the sewer and water business, cut back on the amount of debt local governments are required to issue?

Mr. Wilson - We have a community college and technical school being built outside our city limits and we made a moral commitment to extend water and sewer lines. We applied for federal funds 10 months ago and are now 129th on the list and have no chance of getting federal money. In the meantime, the school is being built. If we can't go beyond present debt limits, we can't do it. We're already borrowed to the hilt on the extension of sewer lines--on the utility itself.

Mrs. Eriksson - The language suggested to be added to the section was something like this: "Nothing in this section shall be construed to authorize the levy of property taxes contrary to the provisions of Section 2 of Article XII." We will prepare a draft and send it out and perhaps action can be taken at the next meeting on this provision.

The committee next discussed sections 4, 6, and 12 of Article XVIII relating to utilities.

Mr. Kramer - The first is Section 4, Article XVIII, which basically provides the power for a municipality to own, operate, lease within their corporate limits public utilities. The proposal before you would add to this section: "Municipalities may impose such charges for such services and use the revenues therefrom for such municipal purposes as determined by the municipality." The main objective would be to overcome the Roettinger case in which the Supreme Court held that any charge for municipal utility services over and above those required for the operation, maintenance



and retirement of debt of the utility constitutes a tax and is therefore subject to regulation by the General Assembly. The Roettinger case has effectively limited municipalities to charging only the amount it needs for operation, maintenance and debt service for municipal utility products and services. The language suggested would accomplish that goal of undoing the effect of the case and allowing municipalities to impose such charges as they deem necessary and to use the proceeds for such purposes as they deem necessary. This amendment would undo a decision that most likely is wrong and has been persuasively argued by Mr. Farrell as incorrectly decided. But it should be considered whether the amendment might not create more difficulties than it would solve because the basic effect would be to allow municipalities to make a profit from the municipal utility services which could then be applied to other functions of the municipality, not related to the utility. That is the way it might be presented to the public. There is a policy question involved about whether municipalities should do that.

Mr. Wilson - Although I think this approach is desirable I don't think we could sell it. I personally would like to go for an in between course. We're not permitted to build up much of a backlog even for the expansion of that utility. We can take care of present debt and current operations but cannot build some seed money for a project such as I am talking about right now where we could handle something unexpected that comes up--an unforeseen major expansion. If we could do that and keep the money in that utility for a number of years and then if it was not needed--for example, annexation or incorporation of the territory I am talking about--then the rates could be reduced. But if the money could be used for any purpose--I think it would be hard to sell. People would view it that the utility rates were being fixed and they had to pay them so that they could support the police department or fix the pothole on someone else's street and they wouldn't like that.

Mr. Loewe - If a city buys utility service such as electricity wholesale and then resells it to consumers cannot they charge a high enough rate to subsidize the rest of the municipal government?

Mr. Kramer - No. Once you buy and then resell the utility service, you are in the utility business. That doesn't mean that you can't attribute to the utility rate all the services that go into the utility--the salaries of all employees, portion of the office space attributed to collection equipment, etc.--all treated as part of the operation. Part of your rate base consists of these costs. But you cannot go beyond that and attribute unrelated costs to the utility.

Mr. Loewe - Columbus takes the surplus funds from the utility and invests them and puts the interest in the general fund.

Mr. Kramer - There are statutes which say what must be done with interest but sometimes charter municipalities are not subject to those.

Mr. Carson - Is someone proposing this change?

Mr. Kramer - No. It is a theme that has run strongly through the writing on this subject and there has been some unhappiness among municipal officials. This draft was prepared to bring the matter before the committee. The Court, in the Roettinger case, said the excess rate was a tax and therefore subject to the General Assembly and the General Assembly has provided by statute what can be done with surplus utility rates. The basic argument against the Roettinger case is that this is not a tax, that municipalities have the power to own and operate utilities and to charge rates

therefor and that you can't turn this into a tax just by saying it. Also, the argument is made that it was not necessary for the court to hold as it did in order to protect the people from excessive rates because there is a common law obligation on a public utility, whether municipally owned or otherwise, to provide service at reasonable rates, so they cannot be excessive and confiscatory. As Mr. Farrell noted, a municipal utility is in the same position vis a vis the consumer as a private utility was before the establishment of the PUCO--that is, you always have a common law right to enforce the common law obligation of a utility to provide the service to a consumer on a reasonable basis, which includes not charging excessive rates. A municipal utility, not subject to the PUCO, has the same common law obligations as others. It cannot discriminate against consumers outside the supplying municipality once the supplying municipality has dedicated itself by contract to supplying consumers in that area outside its boundaries.

Mr. Carson - Wouldn't part of this problem be obviated if you just added the word "reasonable."? Or "not excessive". Isn't that the concern--that this might be used as an operating fund basis for a municipality?

Mr. Kramer - To the extent that you do this at all, that's what's going to happen if it's employed. The utility will be viewed as a source of operating revenue. I'm not sure that adding the word "reasonable" really adds anything.

Mr. Carson - I guess you could do what Jack wants to do if the legislature permitted it.

Mr. Wilson - There's an inhibition against raising rates too high--if municipal officials authorized rates that people consider unreasonable, they will shortly not be municipal officials. People will be voted in who will reduce those rates. If people think they are paying three times what they should for electricity in order to patch streets, they will protest and a protest on a local level is usually effective. It would depend on whether the local electorate want the other improvements funded this way.

Mr. Carson - I'm a little concerned about writing a constitutional provision which deals with charges and then rely on the common law--case law--to impose a restriction that they not be excessive.

Mr. Kramer - I included the word "reasonable" in the initial drafts but that seems to create additional problems--if you say they can impose reasonable charges for certain products and services, it's not really adding anything to the common law, which is already well established on this point, and putting in "reasonable" implies some test. You could very easily get back to the same situation we have now--the court could say that a reasonable rate is one that makes the utility self-supporting. If you say that the municipality can charge such charges as it deems necessary, you still can fall back on the common law limitation and you don't create the possibility of undoing what you are trying to do.

Mrs. Eriksson - Did you give any thought to reversing Roettinger simply by saying that charges in excess of amounts necessary to maintain and operate the utility shall not be construed to be a tax? This would not upset the common law rule that charges must be reasonable. As it now reads, could the Court read it as abrogating the common law rule of reasonableness? How can the Court judge what is reasonable? If you just say it is not a tax, you have removed control from the General Assembly because that is what the Roettinger decision held.

Mr. Carson - Perhaps we should drop the first part and just use the last half of that clause? ". . . to use the revenues therefrom . . ."

Mrs. Eriksson - That would be another suggestion. To eliminate this reference to imposing such charges as determined by the municipality and say simply that the municipality may use revenues for purposes as determined by the municipality or restrict it to specific purposes, as Mr. Wilson suggests, rather than general municipal purposes, restrict to specific municipal purposes or future expansion of the utility.

Mr. Carson - The problem is that there is no PUCO here for municipal utilities.

Mr. Kramer - I will review the Roettinger decision again and let you know why I thought it should be done this way.

Mrs. Eriksson - Perhaps the municipal officials will have some pertinent comments.

Mr. Wilson - I think you will find that municipal officials have felt somewhat limited by the Roettinger case. Although I know of no specific action by the League to promote a constitutional change.

Mr. Carson - If there is a way to accomplish some relaxation so that we gave home rule powers to deal with surplus funds that come from reasonable or not excessive rates, that doesn't offend me, but I surely do not wish to permit utility rates to be used as a tax device to operate the city. You have captive people who have no choice and they can't get their services anywhere else.

Mr. Kramer - I think the concern you are expressing is the real basis of the Roettinger case--

Mr. Wilson - This is somewhat similar to the income tax where the income tax is imposed on people who live outside the city--the people in the city can throw out those who imposed the tax but the ones who live outside the city have no say.

Mr. Loewe - Utility rates apply to people living outside the city also. They have no control over the elected councilmen. With a widespread metropolitan utility it will affect quite a large number of people, in and outside the city.

Mrs. Eriksson - Let us move on to section 6.

Mr. Wilson - I think section 6, limiting the amount a municipal utility can sell outside the municipality, should not be in the Constitution. I am concerned with public service. Suppose there is an area that can only be served by extension of a municipal utility but would require quite a bit of capital improvement by a private utility. The municipality cannot go over the 50% rule by going into that area, but if the municipal utility cannot go in, the extension of the private utility is going to be at a greater cost to the consumer. Is this in the public interest to require that the more expensive route be taken? This limitation, in such a case, prevents the best service to the consumer. There is no reason for this. There is always the law of supply and demand. If someone else can supply service at a lower cost than the city in the outlying areas, they will do so and the city won't even get up to 50%. But if the city can do it cheaper, why should the people in the area, incorporated or unincorporated, be penalized because of the 50% limitation?

Mr. Carson - Does this mean 25% of the total?

Mr. Wilson - No, it means 30% of the total.

Mr. Kramer - You can see, in the case of transportation, one of the items proposed to be added to the exemption, it is very difficult to determine what you are going to measure to find out what the 50% limitation means.

Mr. Wilson - We are under orders to extend our water treatment system by the EPA. Of course, sewers were exempted in 1959, but suppose we had to extend a solid waste management system, we could be in conflict with the Constitution. If we proposed repeal of the section, there would probably be opposition from the private power companies.

Mr. Loewe - In the water and sewer field, are there any private companies?

Mr. Wilson - No. It is the electric utilities that promoted this limitation in the first place.

Mr. Kramer - What has been your experience with a municipal electric utility?

Mr. Wilson - So far, we are OK, but we did go over once and got called on the carpet by the state. We supplied electricity to one of the first rural electric co-ops and at one point their demand got to the point where we went over the 50%.

Mr. Carson - Do you have a contract with the county commissioners? How do you do that?

Mr. Wilson - No, we just know that there are enough people out there who will buy power. There is no contract with the county, only with the individuals.

Mr. Carson - But with a municipality you would have to have a contract?

Mr. Wilson - We could not go into an incorporated area without a contract. We don't have any situations like that. Our extensions are into unincorporated areas adjacent to the city. In some cases there are dual power lines and the people have a choice.

Mr. Carson - You do operate at an advantage in those areas as opposed to a private utility--i.e., no tax.

Mr. Wilson - Yes, but why should the consumer be penalized and made to pay higher prices to a private company?

Mr. Carson - I guess the question is, what are municipalities formed for?

Mr. Wilson - Yes, you could always stop at the corporate limits for everything. One reason we like to expand is because electric power use peaks in the city in the daytime and in the countryside around us is greater at night and early morning. So to get a good operating level for our light plant we welcome this early morning and night service needs--it permits us to operate our plant more efficiently. We don't therefore have to expand our plant for the rural consumer.

Mr. Carson - If you did repeal this section, the city of Piqua couldn't, however, supply power to the entire unincorporated area of the state of Ohio legally.

Mr. Wilson - Legally, but you would be limited by the laws of supply and demand--

economically we couldn't do it. Extending power lines any great distance is expensive and I don't think any city electric plant would try to take over all the unincorporated area in the state. If they can do it more cheaply than the private companies, more power to them. I think we are talking about the people of Ohio and the best way for them to get electric service.

Mr. Carson - I like that transportation addition.

Mr. Wilson - Yes, some of the larger cities with their municipal bus lines are going to have to serve the suburbs because the suburbs cannot afford mass transit themselves.

Mr. Loewe - Not too many of the large municipalities are in the transit business; most of them are regional authorities, or countywide.

Mr. Kramer - Of course, you never know when things will change back again. This constitutional provision may affect some of the smaller municipalities even more than the larger ones. It's most likely that you will have transit authorities in the larger cities but in the medium sized and smaller cities the bus company may well be city-owned. Transportation especially is very difficult to measure the use--the number of people, the number of buses, the number of miles? It is also a problem for airports.

Mrs. Eriksson - Mr. Farrell raised that question--for a municipally owned airport, it would be very difficult to ascertain how to measure the 50% limitation.

Mr. Carson - Was anyone requesting this one?

Mr. Kramer - No, it's proposed simply to raise the questions for the committee. In 1959, the limitation was removed as to sewer and water services because some municipalities were running into some serious problems with the limitation. This draft is an attempt to look at some of the other cases where there presently or potentially are problems.

Mr. Wilson - The reason the water and sewer exemption was adopted in 1959 is that there are very few water and sewer companies, and there was no opposition.

Mr. Kramer - One of the practical questions is the feasibility of repeal--talking about those areas where there is substantial private competition.

Mr. Carson - Could we have someone from the utility group in to discuss this with us? If we add transportation and solid waste, we're practically repealing it anyway. What else do we have besides electricity?

Mrs. Eriksson - There is a potential for municipal gas.

Mr. Wilson - A municipality could own the transmission system and buy the gas for distribution in the municipality.

Mr. Kramer - Practically, those are the only ones--electric and gas.

Mr. Wilson - CATV - I don't know whether they are a public utility or not. In some cities in the west, they are publicly owned--the CATV system.

Mr. Kramer - I suppose there could be a municipal phone company but it seems unlikely.

With the addition of electric, this would cover all the major possibilities for municipal utilities.

Mr. Carson - If this were repealed, would there be any common law that would prohibit a city from taking its electric lines all across the state?

Mr. Kramer - I don't know of anything that would prevent that except that they probably couldn't get the right of way to do it. The Britt case, recently decided by the Supreme Court, makes it clear that the right of eminent domain is not available if the property acquisition is just for the purpose of supplying customers outside the city limits. There is a statutory eminent domain power also but the city must pay taxes on property taken that way, so the City of Columbus, in the Britt case, was insisting that they had the power under the Constitution to use eminent domain to acquire the right of way they needed to expand sewer lines.

Mr. Carson - Do private utility companies have eminent domain power?

Mr. Kramer - Yes.

Mr. Carson - Maybe that is enough of a limitation, then, to city expansion of utilities to permit section 6 to be repealed.

Mr. Wilson - I don't think any city would ever go anywhere with its utility lines where it would end up having to charge more for its service than a private company could.

Mr. Kramer - Let us look at Section 12 of Article XVIII, the last one on the utilities. It deals mainly with financing. For some reason, the section as originally written provides only for the issuance of mortgage revenue bonds, requires a mortgage on the utility property and requires the grant of a franchise. This proposal would permit, in addition to the bonds, notes in anticipation of the bonds--temporary financing, especially during the period of construction until you know what your final costs are so that you could then issue bonds. This would be the same as you do with general obligation financing. There have been ways of approaching this, such as issuing bonds with short call features and so on, but this would specifically provide an additional method of financing which seems desirable. It would also make the mortgage and the franchise optional so that you could use straight revenue bonds for utilities--you might well have to pay a higher interest rate for the bonds if you don't give the security of the mortgage and the franchise but that is a function of the marketability of the bonds. It would also authorize a mortgage to be granted on part of the property if you could segregate it. The second paragraph deals with a problem of refunding general obligation bonds with revenue bonds and vice versa. If you start out with mortgage revenue bonds because you couldn't finance within your debt limits by general obligations and as years go by you may have mortgage revenue bonds outstanding at a fairly high interest rate, it may be to your advantage to handle it within your debt limit and refund with general obligation bonds at a lower interest rate. Although many people think you can do this now, there are no cases on the subject and some municipalities have been advised that they cannot do it--that they could only refund mortgage revenue bonds with additional revenue bonds. This would seem to be a matter of providing additional flexibility in financing, where there are questions now about the ability to do it.

Mr. Carson - How could anyone reach that conclusion? If you have revenue bonds



outstanding and the municipality has the power within the debt limits to issue general obligation bonds why couldn't you use the general obligation bonds to pay off the revenue bonds?

Mr. Kramer - Right now, you have the requirement of the mortgage and the franchise. You can issue general obligation bonds only to acquire or improve permanent improvements and you can refund general obligation bonds with other general obligation bonds but there are no provisions for crossing over and using general obligation bonds to pay off the revenue bonds. It may be that the General Assembly could authorize refunding assuming that you have proper provisions in the revenue bonds to allow cancellation of the mortgage and franchise and to pay them off. As the provisions exist now, you can issue revenue bonds only for the purpose of acquiring, constructing, etc. a utility so that if you have issued general obligation bonds you have already acquired or constructed the utility and if the purpose of the revenue bonds is simply to refund that debt you couldn't do it. That is where the question arises.

Mr. Wilson - This would give flexibility to either way.

Mr. Carson - The sole purpose, then, would be to refund and not to extend.

Mrs. Eriksson - Is the 20 year provision for the franchise a problem? I thought the franchise was deemed to be a limitation on the bonds.

Mr. Kramer - No, the bonds can extend longer than 20 years. The 20-year franchise limitation does not operate as a limitation on the bonds. It's just something that's tacked on.

Mr. Wilson - Generally, by the time that franchise expires there is no concern over the situation. It's generally the first few years of a utility that are crucial to the bondholders.

Mr. Kramer - There's also the question of how much security the franchise is anyway.

Mr. Wilson - What bondholder is going to come in and start running the sewer plant?

Mr. Kramer - That's why we have this suggestion to make both the mortgage and franchise optional. Then you can determine what bondholders are interested in them. If it is important security, then the franchise can be given as security.

Mr. Carson - This second paragraph is undoubtedly good workmanlike language but if there is any way we could either find it is not necessary or cut it down I think it would be desirable, as it is very technical. Perhaps we could add to the existing language in the second line "for such purposes or for refunding general obligation or revenue obligations that are outstanding". Perhaps we could make a simple change like that rather than the more complicated language of the second paragraph.

Mr. Kramer - The limitation on the purposes of issuing general obligation bonds is in the uniform bond law. It may be that the general assembly could authorize that without constitutional change. It would work only in the case where we had some of these other provisions though--only if we had a little more flexibility in the issuance of mortgage revenue bonds.

Mr. Carson - Yes, I like the rest of this. It permits notes in anticipation of bonds, it permits you to eliminate the mortgage, to mortgage part but not all or all of the property, and/or franchise--you don't have to give the franchise, and that's really it. I think all those are desirable. No need to give the bondholders any more than they want or need.

Mr. Wilson - All of this does provide more flexibility for local decision-making as to which way to go.

Mr. Kramer - These drafts are to present ideas for discussion and are not in final form.

Mr. Wilson - In the long run, everything you are trying to do here will make the job of municipal officials easier. The concepts are good.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
April 17, 1974

Summary - Evening

A dinner meeting was held with representatives of the Ohio Municipal League. Mrs. Linda Orfirer, committee chairman, was not present due to illness. Present were committee members Carson and Wilson, staff members Kramer and Eriksson, and the following from the Ohio Municipal League: Mr. Dale Helsel, Middletown City Manager, Mr. James Mann, Chillicothe Assistant City Solicitor, Mr. Al Strozdas, Springfield City Manager, and Mr. Thomas Luebbers, Cincinnati City Solicitor, and Mr. John Gotherman, Ohio Municipal League.

Sections 4, 6, and 12 of Article XVIII dealing with municipal utilities, were before the group for discussion. Mr. Helsel commented on the sections on behalf of the Municipal League officials.

Mr. Helsel - We feel that the constitutional provisions relating to utilities are 95% effective. There are minor things which need adjustment but basically we feel we can live with the existing provisions. They have served the cities well and cities have been able to develop utilities, so as a general rule we would probably not come to you with suggested changes even though, as we go through them, we find no problems with the proposals. We recognize that there are in some areas, such as mass transit.

The first proposal deals with the rights of cities to set rates and to use revenues for any purpose. We were for it, although we recognized that some problems might arise. We're not suggesting it but it would be something we could support if it appeared in the constitutional revision program.

Mrs. Eriksson - What problems do you have in mind?

Mr. Helsel - I was thinking of political questions that might be raised. The rates that are established are not really established in a complete vacuum. It's very difficult to raise rates, city councils are reluctant to do this, sometimes even for their own good and the good of the utility let alone to get money to run something else. But I don't see communities wanting to raise utility rates unless they absolutely have to.

Mr. Wilson - With present limitations you can't build up adequate surpluses for unexpected or large expansion of a utility. Would any city really go overboard and try to fund the whole city operation from utility rates? I don't think that would happen because the electorate would be so unhappy with the councilmen and commissioners who tried to run the whole city off of utilities and would replace them with others.

Mr. Helsel - There is something in the system that will prevent municipalities from raising these rates, particularly if it creates a surplus because the first thing that happens when people find a surplus is "let's cut the rates." So if you allow for surpluses for future expansion you can almost be sure there will be a lot of pressure to cut the rates. In my experience in three Ohio municipalities, raising the rates is a last resource and usually six months after it should have been done. It's difficult to take some of this money to pay for part of say bookkeeping operations, or the rental of offices. It's good to have a surplus to meet contingencies and expansion and so that you can move very quickly.

Mr. Carson - You're saying that the rates are never going to be high enough to help

the general revenues of a city. The council won't permit that nor will the people.

Mr. Helsel - The problem you run into in setting utility rates is first finding what is an equitable rate, which is not a science at all but just kind of close your eyes and jab. Do you charge everybody for that basic cost, including industries? There are some that soak the industries. Or do you give a single family a low rate? When you set these rates, you're thinking of all these other considerations. How is it going to affect the retired person?

Mr. Wilson - Basically any municipally owned operation sets its rates somewhat as a private utility--different rates for commercial and residential.

Mr. Helsel - The city has one process that the private utility doesn't have. The political process. Most of the communities have found that the political process operates to restrict rates. In working with legislation affecting utilities, the criticism has usually been that the larger cities do not charge a sufficient amount of money for the city to make the necessary improvements to clean up the environment--to do the things that the regulatory agencies have told us to do. The private utility doesn't have the elective official answerable to the people. I don't think councilmen really view the utility rate as much different from a tax. They view service taxes, utility charges, the same as they do taxes, not to be increased without political effect.

Mr. Wilson - Our situation is very unique because we have two power lines in the same territory and people can switch if they want to.

Mr. Helsel - I like the statement that the municipality determines the rate structure and if it determines that it wants to give a break to the individual I think that's a decision that they ought to be able to make. In water rates we're not charging enough to give industries a free ride. Under the federal regulations you're not allowed to give industries a free ride even if you want to.

Mr. Gotherman - Currently you can't discriminate unreasonably among the inhabitants of a municipality in your rate structure. If you have such an unlawful discrimination the court will intervene to correct that. This language isn't intended to allow an unlawful discrimination. The common law prevents unlawful discrimination and unreasonable rates.

Mr. Carson - I guess you are saying that under the political facts of life, utility rates are not structured so important surpluses are generated for purposes other than the utility.

Mr. Helsel - It is possible to have a surplus this year and then see it dwindle out. It's not likely in these days of inflation. Instead of a 10% increase, someone might suggest a 15% increase so they won't have to do it next year. So that first year you may end up with a surplus that the next year you won't have. Technically, I suppose you should set the rate every year. I don't see the surpluses developing.

Mr. Wilson - We should have a chance to create a surplus for future expansion, moreso than under present law.

Mr. Helsel - In terms of transit you might want to start building up a fund to replace buses, or something of that sort.

Mr. Kramer - I don't think there's any problem about reasonable repair and replacement, even under the Roettinger decision. Building up any sizeable fund for future expansion is another question.

Mr. Gotherman - In those instances where, over the years, villages have accumulated a fair amount of money which was small annually but collectively amounted to a surplus I can't think of any time when the municipality had difficulty in convincing the court, with one exception, that they could use the money for another public purpose. There has been only one case in the last 15 years where this was refused.

Mr. Helsel - Section 6 deals with the 50% limitation. We felt we could support proposed changes adding transportation and solid waste management to the exception. We did raise the question of why other utility services would not be added to the exception. Why enumerate exceptions? There may be something come up tomorrow which we can call a public utility which we don't today. I guess we're talking about wording. I prefer the wording that 50% shall not apply to the sale of public utility services.

Mrs. Eriksson - You mean we might as well repeal the section.

Mr. Carson - I proposed that possibility this afternoon. Is there anything other than electricity that anyone sees as a problem to repeal?

Mr. Wilson - Not at the moment.

Mr. Helsel - There are some municipal gas plants but there can't be more than three or four of them. Cable television might some day become a public utility. That's conceivable that the 50% might create a problem there. Just trying to guess what might be a utility is difficult.

Mr. Strozdas - I think solid waste management is a potential problem.

Mr. Helsel - If it is true that it's going to take a certain technology to develop a good resource recovery in the solid waste field, Cleveland might be the city in the metropolitan area with the capability of starting it. I would say either repeal the section or broaden the language of the exception even more than is indicated in this draft.

Mr. Wilson - I think the basic reason for having this restriction in the Constitution no longer exists. The electric companies wanted to protect a market in the rural areas, and now there are not too many rural areas that do not have electric service.

Mr. Helsel - How do you measure 50% of an airport?

Mr. Gotherman - In the case of an airport what do you deliver, except a terminal and a runway and the airline does the rest? One problem is this: Are we raising questions about things that are not now considered utilities? If people vote on this and reject the amendment are they then going to be viewed by the courts as utilities? We don't have the answer--just what a utility is for purposes of this particular provision? Is solid waste now considered to be a utility? And if it is not, by putting it on the ballot and having the people reject it, as sometimes they do, do we give the courts a reason to say that something that was not previously a utility is now a utility subject to this limitation? Would it be better to have this provision

"for everything except" in reverse? That would eliminate the problem of what are the unnamed public utilities.

Mr. Carson - May I ask a question on a very interesting point which none of us discussed? The question of whether solid waste management is a public utility has not been decided, is that correct? Garbage collection?

Mr. Helsel - Very few cities do garbage collection as a city function.

Mr. Kramer - The question has never been raised although solid waste management certainly has all the characteristics of a utility.

Mr. Helsel - We issued mortgage revenue bonds in Bedford for an incinerator and served several communities.

Mr. Gotherman - If the practical problem is avoiding mention of all these things which may some day be treated as a utility, would it not be better for a constitution to approach that issue by simply saying electricity is the only thing to which the limitation applies? If that is the policy decision that's going to be in the Constitution, would it not be better to have it limited to that particular service?

Mr. Carson - Let me get back to solid waste. I don't think anybody in writing this, I trust, was intending to definitively determine that solid waste management is a public utility and that the City of Cincinnati or the City of Cleveland has exclusive jurisdiction to regulate. They don't now, do they?

Mr. Gotherman - I think the city does have the right to franchise this, and license or otherwise regulate.

Mr. Helsel - There was a time when we prohibited private haulers in the city.

Mr. Carson - Is this an exercise of the power to regulate utilities? We're saying that this is a public utility when it hasn't yet decided to be one.

Mr. Strozdas - That probably speaks all the more to the issue of repeal. Is the problem of the electric utility the problem that we're imagining it is? It's been the problem, but except for Piqua which has unusual production capability, is the average city which produces electricity capable in today's market of expanding their service-- knowing the kind of investment it takes, and with the EPA requirements?

Mr. Gotherman - Cuyahoga Falls simply buys from a private company and under federal regulations I don't think a private utility can cut off a municipal distribution system.

Mr. Helsel - And then you get into the small places like Bryan. It's the only thing in the whole county.

Mr. Strozdas - I was thinking with the places that are being built you are just not in the ball game with them. I was thinking of a municipality that was generating electricity.

Mr. Wilson - I think the private companies will still object to repeal, but not as strongly as they did in the days when rural areas had no electric service.



Mr. Helsel - Water and sewer are pretty well settled down in Ohio, and there's not a lot of competition in the sewer business. There are only 1 or 2 private water companies. As to transportation, there may be some problems there that repeal of this would help. I don't see what good the section does. If it weren't in the Constitution would you want to put it in there? Did anybody suggest there be a 50% limitation?

Mr. Carson - John, you were suggesting that instead of doing what we're doing here by excluding specifics that we begin the section by saying "except for a public utility generating electricity"--is that right?

Mr. Gotherman - If the public policy of the state is going to be to prevent municipal electric utilities from selling more than 50% outside the city boundaries and it isn't really dependent that any other utility function be governed by that provision, it would be better to state it that way and say that the limitation applies only to electric. And the reason for that is that constitutional amendments last a long time. Mass transit in 1912 was not a problem. Today Cincinnati may need to have an exception to this provision to effectively operate a city bus system.

Mr. Wilson - I can't see any justification for it, as far as creating better service for the consumer. There's no reason for it. If a municipal utility can extend its service to selling 51% outside of town at a lower rate than a private company could, the Constitution prohibits the rendering of the best possible service.

Mr. Helsel - Section 12 deals with utility revenue bonds, which are not general obligation bonds. There are some word changes in this one which have been suggested such as adding "improve." Apparently someone feels that acquiring, constructing or extending does not include improvements to the system. And if you can't issue notes in anticipation of the bonds, you could just issue 1-year bonds, or bonds with an early call date. But that seems a way of getting around the Constitution so that I think we could support provisions such as these. We are in favor of making it clearer. We are in favor of providing as security either a mortgage or a franchise to operate the utility as security. Electric utilities sometimes have difficulty in issuing additional bonds because of this present requirement because they can't give a mortgage on a mortgage.

Mr. Gotherman - Would this be the same as the revenue bonds that may be issued for nonutility purposes under Article XVIII, section 3? Or would this still require a franchise?

Mr. Kramer - It's a question of what security would be required in order to make your bonds marketable. They shall be secured by revenues and, if provided in the ordinance, you would grant a mortgage or franchise only if you were to so provide, just as your parking bonds are. If you can sell your bonds and get a favorable rate, without a mortgage or franchise, that would be OK.

Mr. Wilson - I don't know who wants a franchise to operate a swimming pool but we may have to give one.

Mr. Helsel - We're building a parking garage and a golf course out of general obligation bonds but the revenues, of course, are pledged. What's false in the whole mortgage revenue is the idea that the city would let someone take over the utility or default on the bonds. The city is not going to let any bond be defaulted under any circumstance except as a last resort in a depression.

Mr. Wilson - We talked about this before as to whether there had been any record of any default and we couldn't think of any examples.

Mr. Helsel - I think the whole idea of a mortgage is kind of archaic. You'd get the money from some source.

Mr. Kramer - That's an additional reason for giving this kind of flexibility. Bondholders are really looking at the revenue.

Mr. Carson - I think this is really a good one. Why give the bondholders more than they need to buy the bonds?

Mr. Helsel - "Mortgage revenue bonds could be refunded by general obligation bonds and then the general obligation bonds could be refunded by mortgage revenue bonds." John thought maybe one of them could be done by statute.

Mr. Kramer - We were talking this afternoon about the possibility that refunding the revenue bonds by general obligation bonds could perhaps be provided by statute but not the other way around.

Mr. Helsel - If it needs to be said, then put it in there. You could have a utility that could no longer meet those mortgage payments, and you would need to get the money from some other source.

Mr. Kramer - There's another problem not covered here and that deals with the refunding of straight revenue bonds issued under Article XVIII, section 3. This covers the utilities, but where a golf course is funded by revenue bonds under Article XVIII, section 3, they may not be marketable and you would want to finance with general obligations and then refund with revenue bonds. That might be another case to consider.

Mr. Gotherman - Is it clear that the failure of Article XVIII, section 12 to mention refunding in the first part of the section would prevent the General Assembly from authorizing the refunding of the general obligation by mortgage revenue if the original purpose was to acquire, construct or extend the public utility? Is that something that we cannot handle by statute? Can the entire last paragraph be handled by statute?

Mr. Kramer - In the case of refunding general obligations by mortgage revenues, we have no authority and I think it would take a Supreme Court decision, absent specific constitutional language. In the second case, refunding revenue bonds by general obligations, that seems much more likely.

Mr. Helsel - If this were in this particular section, there would be no question about it.

Mr. Kramer - You can sometimes make great savings if you can refund when you want to.

Mrs. Eriksson - Let us discuss the indirect debt limit a little bit before we go on to section 13. Getting rid of the indirect debt limit was one of the things you indicated you were interested in doing, and we have worked with John to have a draft prepared which, as far as I know, the Municipal League agrees with. The only item that our committee indicated they would like to add to this draft, which has not yet been added, is some language which would specifically reiterate that unvoted taxes beyond the 10-mill limit are not being authorized by this section. Gene, would you like to comment on bond counsel reactions to this section? I think that our committee

is ready to recommend this language with the addition of the language I suggested.

Mr. Kramer - Since this was drafted the Municipal League has received copies of all the correspondence with bond counsel. One firm indicated that they find the language satisfactory for accomplishing the objective of providing the ability, at least, to eliminate the existing problem of the indirect debt limitation. Another has indicated some reservations if this were to lead to a general weakening of the quality of Ohio general obligation bonds--raising this question. We have responded to that letter pointing out that there's nothing in this section itself which changes the indirect debt limit and no change is being made now in the statute. The indirect debt limit would still exist and problems of the quality of the bonds would really have to be faced at the time statutory changes were made. So I think we have agreement that the provision itself would be an enabling provision allowing the General Assembly to deal with this. We have made the suggestion in the implementation of this by statute that it might be best to limit the ability of local subdivisions to issue bonds secured by other than the ultimate pledge of property taxes. The ones who face this problem have substantial revenues other than property tax revenues. The broader pledge of taxes should be limited to those few cases where they needed some relief from it. That's statutory.

Mr. Gotherman - We have worked with representatives of bond counsel in Ohio and everybody agrees that it's necessary but everybody gets nervous about how you change the concept. We've taken the position that we would like to have it eliminated but not at the expense of the quality of bond issues in Ohio. I understand from talk with the three bond counsel everyone is pretty well convinced that that can be done and that you really don't have to cross that bridge in the constitutional provision, as much as in the language of the implementing statute. It seems to me that the extra language you are suggesting is probably totally unnecessary. This section doesn't really deal with taxes and the other one clearly does say that you cannot have taxes except in certain cases. It seems we might review that language.

Mrs. Eriksson - We are going to draft it and send it out again.

Mr. Gotherman - Sec. 5705.51 grants some extra taxing power under the constitutional 10-mill limitation and within it, but over and above the existing statute. The problem with that statute is because of the uniform rule, the equal protection issue, bond counsel will need a case to test the validity of that section of the Code but if the language to be added to this section would eliminate and prevent the drafting and use of that kind of a section which makes use of the difference between true value and tax value, which is a substantial margin, I think that we would not be interested in doing that.

Mrs. Eriksson - Section 5705.51 is being used within section 2. And we're emphasizing the fact that section 2 is the ultimate limit.

Mr. Carson - John, do you disagree with the concept of limiting and making it clear that this section does not expand the limitation of section 2? I don't think you're going to get this out of the Commission without making that clear.

Mr. Gotherman - I don't see how the language that I've read here would expand the 10-mill tax limitation.

Mr. Helsel - If it's a matter of language someone else should review that, but if

it's a matter of principle, I don't think we want to attack the 10-mill limitation here. While some of us may not agree with it, if we wanted to attack it we would go back to the section that deals with it.

Mr. Gotherman - We do have to be careful here that the language added here doesn't limit the flexibility that we do have.

Mr. Carson - Gene told us that he did not think this language did, in fact, expand the 10-mill limitation. If that's true why don't we say it? A year or so ago when we were working on this before, the view by people advising the committee at that time was that there was no way to eliminate indirect debt limit without invading the one per cent rule and that was the language in the drafts that we considered. And the Taxation Committee concluded that it was unwilling to recommend, and didn't think it was being practical to recommend, a change in section 11 which permitted an invasion of the one per cent rule. I think this approach is fine and if it solves the problem without touching the one per cent rule, which to be practical I don't think we're going to be able to do, then I think we should accept it. Because of the importance of this and the importance to so many communities we'd kind of like to get it out of this committee next month. And get it into the Commission so this doesn't get bogged down in November when we're trying to rush things through and bond counsel have to be consulted.

Mr. Nelsel - As a practical matter, in the last 10 years how many communities have had to use the 10 mills for debt? have they had to levy that tax?

Mr. Kramer - No, I think you have to go back some years to find that happening.

Mr. Carson - If we can get this one to the Commission, there will be time to consider it.

Mr. Nelsel - Would you need help before the full Commission?

Mrs. Eriksson - I think that would be most helpful, if you plan to appear when the Commission holds its public hearing on this. Shall we discuss section 13? What we're trying to do here is to get rid of section 6 of Article XIII while not eliminating any power that the General Assembly might feel it didn't want eliminated.

Mr. Kramer - I'm not aware of any case under section 6 of Article XIII that interprets that section that wouldn't also apply to section 13 of Article XVIII.

Mr. Gotherman - Are we giving up anything here?

Mr. Kramer - I think we do have cases saying that the power to limit may not be used to prohibit. There was a case in which the General Assembly tried to prohibit the use of general obligation bonds for utility purposes, and the court said you cannot cut off altogether their power to issue general obligation bonds.

Mr. Nelsel - We understand that you'll also be discussing townships and we feel we can't ignore what happens to townships and we'd like to have some input on that subject too.

Mrs. Eriksson - There are still two other questions referred to this committee and the one is preemption. The other question is the initiative and referendum provisions which are being dealt with by our Elections Committee but they are recommending that

section in Article II be referred to this committee. You might want to recommend something different as far as municipalities are concerned. I am sure that you will want to examine their recommendations as far as state issues are concerned, to see how they will affect cities and whether you would want to put anything different in the Constitution.

The committee adjourned, to meet at the call of the chairman.

Summary

Present at the meeting of the Local Government Committee were Mrs. Orfirer, Chairman, and Mr. Carson, Staff members Mr. Kramer and Mrs. Eriksson, Mr. Gotherman of the Ohio Municipal League, Mrs. Brownell of the League of Women Voters and Mr. D. Bruce Mansfield. The committee met at 1 p.m. in the Commission offices.

A proposal to recommend rearrangement of the Article XVIII sections was agreed to. It would place the present sections in the following order: 1, 2, 3, 7, 8, 9, 13, 11, 4, 5, 12 and 6. Section 10 may be recommended for repeal and the initiative and referendum section, section 1f of Article II, may be added, and section 14 will be reviewed when the committee considers Initiative and Referendum. The Elections Committee <sup>Report</sup> on Initiative and Referendum will be ready shortly so that you can see what they are recommending as far as the state initiative and referendum is concerned. Section 1f simply says that the right of initiative and referendum shall be reserved for municipalities. Should this be moved to Article XVIII, either as is or altered in some fashion? I would think that if it should be altered, the Municipal League and those who know the various charter and statutory provisions would make suggestions.

Mr. Gotherman - We haven't had a chance to digest this but we may want to suggest something in the constitutional provisions to eliminate the confusion about whether charter cities can provide by charter for something different from the statutes. We may want to recommend following the classification in Article XVIII already, with respect to charter and noncharter cities.

Mr. Kramer - Under Article II, section 1f, it really leaves it open to the extent that it provides for initiative and referendum in the charter. Sometimes it's a problem of just charter drafting, and the real problems come with ambiguities in the charter language. You're not quite sure to what extent some of the statutory provisions prevail in the absence of a charter provision.

Mrs. Orfirer - But then that is not really a constitutional problem.

Mr. Gotherman - So far the court has been inclined to side with the charter in these cases but I would be inclined to think that we would want to clarify that. As to charter cities, the charter will provide the criteria for initiative and referendum.

Mrs. Eriksson - For instance, there's a situation like this. The Constitution, with respect to referendum, says that the legislature can pass a law as an emergency. Could a municipal charter eliminate the possibility of an emergency ordinance or could it be for other purposes? Or could it make a municipal ordinance passed as an emergency unrepealable by initiative? There are a number of questions here that might create court questions.

Mr. Kramer - Courts have held that the emergency provision is not a necessary part of referendum.

Mrs. Eriksson - But this is the kind of question though that people raise court suits.

Mr. Gotherman - In the Oxford case, the court looked at the section dealing with the state, in order to determine which kinds of laws could be adopted by charter that



would exempt the charter from initiative in that case. I think there's an opportunity to clarify it, don't you think so, Gene, simplify those kinds of legal arguments and say simply that whatever the charter says will prevail, not tied to the state initiative and referendum procedures.

Mr. Kramer - Initiative and referendum, just the words by themselves, have very little content.

Mr. Gotherman - I think the important part is that this is an area which needs rather close attention again.

Mrs. Eriksson - At the next meeting of the committee, the Initiative and Referendum report should be prepared. Of course, you still have the township questions.

Mr. Gotherman - I think our committee expressed a desire to be available to give their impressions about township powers. They would like to say a few things about townships, constitutional provisions on townships. And we could do that at the same time as we address ourselves to the initiative and referendum. I think Ann suggested that townships might work in between initiative and referendum.

Mrs. Orfirer - Well, I think what we'll do then, is have a committee meeting at which we take care of some other matters and have a second meeting at which your people will discuss both initiative and referendum and townships.

Mr. Gotherman - I don't think that either one of those subject matters are the kind that really need a lot of different people. I think that maybe myself and a spokesman for the committee can handle a position on the initiative and referendum which has to be somewhat technical. The township powers are not going to be that hard to articulate unless you would like to have a lot of people there to say the same thing.

Mrs. Orfirer - On the townships, I would really like very much to have a broader view.

Mr. Gotherman - It will be a party line on that from our side. There's no disagreement about it.

Mrs. Orfirer - One of the questions that I had was whether on the ballot the renumbering of sections can be one question.

Mrs. Eriksson - There's no way to change a number except to put the whole section on, and do it by amendment, and you wouldn't want to put the same section on twice so that a change in the section number would be an inherent part of whatever changes were made in the section, and if there are sections with no changes other than the number I don't know any way to do it except by putting the whole section on the ballot.

Mrs. Orfirer - That couldn't be all one question, those that weren't having any substantive changes? Just a number change. Could they be on one vote, do you think?

Mrs. Eriksson - If there were no substantive change, yes, I think they could be grouped together, assuming that if you can do it in such a fashion that if one issue fails and another one passes, you don't end up with two sections with the same number. That's a question of making sure that you can do it in the drafting process.

Mr. Carson - It would be good if we could find a way to rearrange so that we don't have to put the whole section on where there's no substantive change.

Mrs. Eriksson - I thought about that. The key, perhaps, to that is Section 7 and I don't see how you can do it in any logical way without either changing 3 or 7. I couldn't find any way to do it. As far as sections without any substantive change it really wouldn't involve perhaps one or two depending on what action the committee takes on the utility sections, because even though the changes may not be of importance there will still be some changes in the sections.

Mrs. Orfirer - We have the new language here for section 12 of Article XVIII, the section dealing with utility revenue bonds. Gene, would you comment?

Mr. Kramer - There is no substantive change made or intended between the two drafts with the exception that if you look in the April 1 draft the second sentence of the added paragraph makes a statement authorizing refunding of the revenue bonds by general obligation bonds. I think there is nothing that would prevent the General Assembly from providing under existing law from doing that, so that it is not essential in the Constitution, since this is a provision authorizing the revenue bonds and authorizing the refunding of general obligation notes or bonds by revenue bonds. The substance of the first sentence has been moved up and begins in the last two words of the second line of the second draft. The language in capital letters found in the second, third, and fourth lines of the May 13 draft is the provision for refunding. The language is changed somewhat. It adds to purposes for which bonds can be issued under this section--to provide for refunding at any subsequent date any notes or bonds including general obligation bonds or notes issued at any time for such purposes. Refunding at any subsequent date language is to permit both refunding or advance refunding. With immediate refunding you refund outstanding obligations at their maturity. In case of advance refunding, the bonds that are being refunded are maturing sometime in the future and you issue bonds at the present time and invest the proceeds and as they mature, the proceeds of the refunding bonds pay off the principal and interest of the outstanding bonds when they become callable. It makes it clear that as long as bonds are issued for the purpose of acquiring or constructing a public utility then they can be refunded also. The additional language specifically authorizes notes to be issued in anticipation of bonds under this section. As in the previous draft, the word "mortgage" which describes bonds has been eliminated because the provision for a mortgage is made optional. The bonds may be further secured by a mortgage on the property of such public utility, which mortgage may provide for a franchise. The reason for the changed language is that the paragraph said either a mortgage or a mortgage and a franchise which isn't strictly accurate because you have a franchise only in the case where you have granted a mortgage, because a franchise becomes operative only on foreclosure of the mortgage. If there are mortgage revenue bonds, they can have a mortgage or a mortgage and a franchise.

Mr. Carson - This is quite a bit more compact and I think that is good. Is there any substantive difference between these two?

Kramer - No, there's an attempt to clarify in the case of refunding that the word "refunding" may also mean advance refunding. It's not a substantive change, but more clarification. In the second part, rather than saying "either or both the mortgage or franchise" since you can't have a franchise only with the mortgage, it's more accurate to say "secured by a mortgage and a mortgage may provide for a franchise."

Mr. Mansfield - As a matter of curiosity I thought I heard you say it's the first time I have heard the word "refunding," used to issue bonds to pay off bonds.

Mr. Kramer - It's where you have notes in anticipation of bonds. When you issue the bonds you're really refunding the notes.

Mr. Mansfield - Let's say you have 30-year bonds. You pay them off and issue new bonds.

Mr. Kramer - No, you wouldn't be refunding those. It would be refunding those bonds when they become callable.

Mr. Mansfield - I'm a little curious as to why you're recommending this change.

Mr. Kramer - More flexibility for the municipalities. Sometimes the major reason that mortgage revenue bonds are issued initially is that the municipality just doesn't have the capacity within its general obligation debt limits to provide for this, and they'll issue the more expensive mortgage revenue bonds for that reason. In later years, they may find that their situation is such that they could issue general obligation bonds at a substantially lower interest cost and refund the revenue bonds.

Mr. Mansfield - I would think that, if you can refund general obligation bonds with revenue bonds, that would detract from the marketability of the bonds.

Mr. Kramer - If they are general obligation bonds, and as long as they are outstanding as general obligation bonds, the pledge of taxes is made.

Mr. Mansfield - What I'm asking is that if you have in the original bond agreement a provision that the general obligation bonds may be called and refunded with revenue bonds aren't you impairing the value of the written bond?

Mr. Kramer - I don't think the source of the refunding makes any difference. The fact that they are callable at all may make them less attractive, but you're not changing the character of them as general obligation bonds. I think the point is that what you're talking about is mainly a matter of market limitation and its rightful function of economics. As of now many municipalities are unable, due to legal restrictions, to do those things which make sense economically. They vary from time to time. As far as the issuance of a franchise is concerned it may be that in many cases, even most cases, the bondholders may still want a mortgage on the property, and that you won't be able to issue straight revenue bonds. Experience has been such over the years that these things are all worked out on the basis of what is saleable and what is not. The purchaser is in a position to demand what he wants in the way of security, and revenue bonds have been issued for other purposes, like parking, without a mortgage, authorizing the municipalities to do whatever is necessary in order to market their bonds.

Mrs. Orfirer - Any other questions or comments? Then we will consider that ready to be put before the Commission. The next item is section 6 of Article XVIII and this has to do with the 50% limitation. We have discussed several options. The draft that you have before you provides for adding to the exemptions of water and sewer, transportation and solid waste management. The question came up as to repealing the provision rather than just adding a list of utilities which would be exempted from the 50% limitation. Apparently there have been several problems that I'm sure you are all aware of in terms of what constitutes 50% and what constitutes being outside the municipality. Do you people who have much more experience with it feel that repeal would be a good idea? Would there be any objections to this or would there be any reason to maintain it as it now is?

Mr. Mansfield - I would say very quickly that the electric public utility industry would be very much opposed to repeal.

Mrs. Orfirer - You think that they would still feel they needed this protection?

Mr. Mansfield - Much more strongly than ever.

Mrs. Orfirer - Why more strongly than ever?

Mr. Mansfield - For a number of reasons. When this section was originally adopted back in 1912, the electric utility business was considerably different than it is now. You had a lot of small generators in small towns, and that day is long since gone. It's very unusual for a utility now to build any less than 300,000 to 500,000 kilowatts. The fact of the matter is that there are very few cities having their own generators. In order to be able to get generating capacity on somewhat competitive costs there is quite a trend now to have the municipality at least request that it be given tenancy in common ownership of the large units that some people are putting up. And I would think that in the future if the municipality wished to stay in the generation, transmission, as well as distribution business it is very unlikely that it will build or expand its own generator. So I think it makes it all the more important then, if you agree that at least electric utilities should be primarily investor owned, it seems to me that you don't deliberately do anything to impede its effectiveness of operation. Of course the purpose of this 50% limitation, as I understand it, was to see to it that the municipal utility was operating primarily for the benefit of the citizens of that municipality, recognizing at the same time that building generating facilities, of course while it's not easy, in fact it's almost impossible to build a generating facility coincident with the demand so that right after you put in a new facility you've got some surplus power. So I think this was an effort on the part of the framers of the Constitution to recognize the economics of this kind of a situation and that any surplus would be sold outside. And yet at the same time they wanted to preserve the free enterprise system, basically, and this was a compromise limitation. At the last meeting, the question was raised, what difference does it make if the municipal utility goes outside when it can provide the consumer with a more economic service? I think it comes back to the basic philosophy that the municipal utility pays no property taxes or income taxes--you can see that there are obvious advantages built in. Normally, if the utility is being operated efficiently, the very nature of things can produce the product at much lesser cost. In the old days they could. This is not true now because, as I said earlier, it's not very efficient to build a small size electric generator, so you lose some of that tax benefit in the smaller units. It comes back then to whether you really want to expand the competition between tax exempt organizations and taxable organizations and if you do not want to do that then the limitation ought to stay. And if you want public ownership of all utilities that's something else. I come back to my original statement so long as we're still in business we would be much opposed to repeal of this section.

Mrs. Eriksson - When you talk about tenancy in common, so you mean that if a municipal utility wished to expand it would probably have to either go together with another municipality or with a private utility in order to construct a generator or secure power? Are there any situations like that in Ohio?

Mr. Mansfield - There are some pending. For example, the City of Cleveland municipal operation has requested membership in what we call the Central Area Coordination Pool which is comprised of Toledo Edison, Cleveland Electric Illuminating Company,

ourselves and Duquesne Light. Now I understand, and this is slightly hearsay, that actually Cleveland Muni doesn't want to actually own any of this capacity, but it really wants to use this as some sort of leverage in order to get a favorable wholesale rate.

Mrs. Eriksson - Do they wish to expand their own distribution?

Mr. Mansfield - Of course they can expand their own distribution any time. People who live in Cleveland have a choice of whether they want to take the C. E. I. or take the Muni. By the same token, we have a couple of places like Newton Falls where we operate, in fact our line goes down one side of the street and Newton Falls goes down the other. There is a statute which says you can't switch from one utility to another unless your service has been cut off for so many days. This is not applicable to a municipal system.

Mrs. Orfirer - Does Muni light want to be part of this pool in order to get back-up power?

Mr. Mansfield - It's not only back-up power, it's base loaded too. I don't think I can say with any degree of knowledge, Linda, whether it really wants to own generating capability or whether it doesn't want to use this right, if it has a right, and this is an anti-trust question that's coming up more and more over the country. If the Muni has a right to buy into this capacity then they could use that right as leverage to get a more favorable wholesale rate. But at least they have requested the opportunity to become a member of our pool and yet we have asked the anti-trust people to make a study.

Mr. Carson - Is there a right for municipal utilities to join one of these pools?

Mr. Mansfield - I don't know. Ten years ago I would have said that we have a perfect right to exclude them. Now I'm not at all sure we have. It's a difference in attitude taken by the Department of Justice and the anti-trust division. There was a day, going back 10 or 15 years, when by and large public utilities were not subject to the anti-trust laws, but that may no longer be true. There is one exception-- where you have areas of operation certified by the state, and we don't have this in Ohio.

Mrs. Eriksson - Wouldn't there be a problem with section 6 of Article VIII in conjunction with a municipal utility joining a pool of private companies?

Mr. Mansfield - Yes, it's a problem not yet resolved.

Mrs. Eriksson - Are there any other utilities that you would see section 6 as affecting?

Mr. Mansfield - I think Hamilton has a gas system. Hamilton doesn't produce its own gas. The section is talking in terms of "surplus". That is a question that, as far as I know, has never been resolved. We serve 20 municipalities at wholesale and I suppose that one could well argue that if you are supplying the requirements of X city that, in theory at least, the city can't get a surplus, and yet I am sure all of these municipalities go outside the corporate limits.

Mrs. Eriksson - Is that true in gas?

Mr. Mansfield - I can't answer. In fact I don't know of any other municipal gas operation other than Hamilton but there may be some.

Mr. Carson - Do either of these instances you're talking about have their own distribution systems?

Mr. Mansfield - Yes.

Mrs. Orfirer - Then the municipality itself is making money on doing this.

Mr. Mansfield - The ability to make money is there. Most of these municipalities to which we are selling set their rates almost the same as ours. In most instances they are making a profit.

Mrs. Orfirer - Then they are not undercutting you in terms of rates. They're not interfering rate-wise with what you're doing but still are bringing in funds for the city.

Mr. Mansfield - At the expense of you and me and the rest of the taxpayers.

Mr. Gotherman - The city doesn't have the legal ability, we talked about this last time, in the Roettinger case, it doesn't have the ability to use the electric revenue to pay the police department. It might be able to use the proceeds for street lighting and thus prevent a special assessment or higher taxes for that purpose. And they might build up a surplus and then transfer it but you don't do that very often. The municipalities which have money between what they pay for electricity and what they charge use that normally for street lighting functions.

Mr. Mansfield - They're not supposed to use a surplus for general funds.

Mr. Gotherman - You may charge overhead expenses.

Mr. Mansfield - There may have been instances where the municipality has made an effort to avoid this limitation.

Mr. Gotherman - You can transfer the surplus with court permission but you don't do it very often.

Mrs. Orfirer - What happens when communities within the state go to providing governmental services on a regional basis?

Mr. Mansfield - When you say "governmental" I'm stopped because I think you and I would agree that what's governmental and what's proprietary are changed from time to time. Take water, for example; water service used to be considered to be a proprietary function, but now I'm sure no one would question but that is a governmental function. By the same token, in 15 or 25 years it may well be that electric service would be considered to be a governmental function, as opposed to a proprietary function. This whole concept is not a static concept. In the last 15 or 20 years private transportation companies found it uneconomic to operate and almost overnight you had a switch to what is now considered to be a governmental function. And nobody quarrels with the city now getting in the transportation business.

Mrs. Orfirer - In Cleveland, they are not going to be able to exist as a city transportation system and it's going to a county one. It may go to a wider area.



Mr. Mansfield - I suppose what you're getting into are these divisions that the Governor set up by executive order.

Mrs. Orfirer - Yes, or something in terms of governmental regions.

Mr. Mansfield - You've got to assume, I think, that there's going to be full acceptance of the concept of regional government, or metropolitan government or whatever you want to call it. It certainly isn't here yet. It's almost impossible for them to get together on combining governmental services, far less government structure.

Mrs. Orfirer - What I'm thinking about in terms of these services, if it becomes uneconomical for cities to provide cities within their own corporate limits . . .

Mr. Mansfield - It's uneconomic to generate, it's not uneconomic to be in the business. With tax breaks they ought to be able to make money, at the expense of those of us who are paying taxes.

Mr. Gotherman - No one in the Cincinnati area was willing to take on the burden of financing the transit system. Through an extra income tax levy, the city agreed to take it on, but this restriction raises the issue of services outside the boundaries. As for generating electricity, everybody realizes that they can't generate as cheaply as a combination of privately owned and public utility. We would hate to see everything go down, yet there is a need to expand certain exceptions to this rule, like transportation and solid waste. Private vs. public power has always been controversial, and so perhaps the eggs should be in different baskets. If you have any critical transportation problem and waste management problem, they can be treated differently from electricity. The people from Cleveland and Cincinnati are somewhat interested in the problems of transportation right now. I doubt very seriously if they care whether repeal of this section gets on the ballot or not, if a large effort is mounted in opposition.

Mr. Mansfield - Our company used to be in the local transportation business. We got out of it back in 1930. Then there was a private company that changed hands a number of times, and in the late 50's they were doing so poorly that they wanted to give up the franchise. We turned to a metro-transit authority which is located in Akron but operates in Barberton and Cuyahoga Falls through a contractual arrangement among these three cities. We can have the same kind of a levy in Akron--we had a one mill levy for ten years--and it now supports the metro-transit. I think everyone in the private sector realizes that it can't compete at the moment in transportation. Oddly enough, the post office, in our lifetime, has been operated by the government and yet there is a private outfit, United Parcel, which beats them all silly in costs and time of delivering. What effect this is going to have ultimately on the post office I don't know. What I'm trying to say to you is that so long as the people want private power ownership, then we need this section, and so long as those of us who were in the private sector of the electric utility business are still in operation, we want this section.

Mrs. Eriksson - Mr. Mansfield, it was suggested that, rather than simply adding more exceptions, that the section simply read only as a restriction on a municipality operating an electric public utility.

Mr. Mansfield - I'd hate to disturb it anyway. The theory wouldn't make any difference as far as we are concerned but personally I like it the way it is.

Mrs. Eriksson - But you have no objections to adding transportation and solid waste?

Mr. Mansfield - I certainly have no objection to transportation. I don't know enough about solid waste management.

Mr. Gotherman - Apparently it's only profitable if the government provides whoever does it with the tipping fee which is what you have to pay to deliver it. It is usually financed either by user surcharges or taxes.

Mr. Mansfield - We have something going in Akron. Our own company, a certain per cent of our business is selling steam heat, in Akron, Youngstown and Springfield. It's a losing proposition and has been for years. Some years ago we filed an application to get out of the business. While this was pending, all of the environmental problems came along so by the time they got to a hearing on whether we could abandon-- the oil wasn't available--they said no, you can't get out of the business. We're still burning coal, contrary to present standards, and we haven't litigated it to the bitter end. If we lose, I don't know what's going to happen. In the meantime, the City of Akron has gotten very enthusiastic about the solid waste problem and in the process of constructing a solid waste disposal operation with the thought that that will generate enough steam as a by-product so that the City of Akron can take over our steam distribution system. Whether this will become a reality or not I don't know, but it's a possibility.

Mrs. Orfirer - From what I've learned on the Local Government Services Commission it sounds to me as though at the moment the technology is not there to the point where it can go without some kind of a government subsidy.

Mr. Gotherman - The only part that the private sector takes over is after you've collected it all. And they have to be guaranteed so much raw material. So the cost of collecting that and getting it there is financed by service charges, as in some cities householders pay so much to have their garbage picked up, or by taxes in most of the large cities, where you don't pay any fee. That's a governmental subsidy. It may cost \$10 to get it there and they may only pay you \$8.00. If they bought it for any more than that they wouldn't be able to economically produce the energy. I'm not sure that this amendment isn't designed to cover the resource recovery aspect. I suppose where a city like Akron is going to have one of these resource recovery plants it needs a broader base in order to collect their raw materials. Isn't that what's involved?

Mr. Mansfield - I'm not registering any complaint, about putting solid waste management in here. I'm just saying that I don't know enough about the problem to state an opinion, and as a member of the Commission I certainly wouldn't vote against putting it in. From the little I do know, I don't see anybody in solid waste management making any money.

Mr. Kramer - We want to make sure that it covers all aspects. At the present time we're looking at the collection aspect.

Mr. Mansfield - We've talked to a number of prospective business people, wanting to know about buying the end product. The difficulty is that you talking mostly in large communities and the municipalities we serve, with some couple of exceptions, our major power plants may be 100 miles away from that community. There's no way we can buy some solid waste and not have a freight problem.

Mrs. Orfirer - If we add transportation and solid waste management to the exception, what do we want to do about defining what the 50% really applies to?

Mr. Mansfield - I think it would be better to leave it alone. It can be court determined, if necessary. I think you would get yourselves a great many headaches if you tried to fix standards as to how you measure the 50%.

Mrs. Eriksson - If we add transportation, we have eliminated that problem.

Mr. Mansfield - I am not so sure that solid waste management would be construed to be a public utility. By putting it in here you make it a public utility which, if it weren't a public utility in the first place to the extent that you have put it in here and made it a public utility you've really put some restrictions on it that may not be here at all.

Mr. Gotherman - That's the reason I suggested last time that if the real problem is electric or perhaps gas and electric, although there are few municipal gas plants, it might be advisable to avoid that issue and to avoid the problem of now knowing what might some day be held to be a public utility to turn the section around and say that 50% applies to electric instead of having exceptions to it.

Mrs. Orfirer - Would you foresee that it would make any difficulties for you if we turned it around the other way? So that we could avoid future difficulties?

Mr. Mansfield - Is this was the consensus, no. Although we would prefer to leave it alone.

Mrs. Orfirer - I would hate to see anything that we do, such as solid waste management, create more problems than we already have, but I think it is important that if it be construed as a public utility, that it be exempt from this limitation.

Mr. Carson - Another approach would be to take the words "public utility" out.

Mr. Mansfield - I can understand why you suggest this. A municipal plant under the statutes is not a public utility. By definition it's excluded, and yet here in the Constitution the term is applied to them.

Mr. Gotherman - I think the term here is being used in a broader sense.

Mr. Mansfield - There isn't anything in the Constitution that defines public utility. It's not a status concept.

Mr. Gotherman - But it is a defined concept by common law.

Mr. Kramer - It is a concept that can change from time to time, and you can't define it in the Constitution without doing a lot more harm.

Mr. Mansfield - That's right and I think any time you change it you're likely to have results you don't anticipate.

Mr. Kramer - On this question of solid waste management, something that may not be a public utility now, what disadvantages do you see might come from it if it were treated as a public utility?

Mr. Mansfield - This limitation is one.

Mrs. Orfirer - But we're exempting it.

Mr. Gotherman - It might mean you couldn't treat people within your own municipality differently. In some cities they have found it makes more sense to collect garbage twice a week in some areas but not others and then when you apply public utility to it, does that mean that is discriminatory? As far as I know there is no law saying we have to provide uniform governmental services.

Mr. Kramer - Do you think that the concepts of classification are really any different with respect to a municipality as to whether it is a utility or other governmental services?

Mr. Gotherman - We don't have a lot of case law.

Mr. Kramer - I don't think there's any problem with putting extra police in a high crime area, for instance. It's a reasonable classification. If we only add "transportation" we have no assurance that solid waste management is not or will not now or in the future be a public utility in which case the 50% limitation applies to all public utilities.

Mr. Gotherman - I'm not arguing that it should not be excluded. I think if this approach is taken it should be an exception to the 50% limitation. The issue is whether or not you should take the exceptions in reverse.

Mrs. Orfirer - What I was gathering from this conversation is that we were in rather general agreement that we should state it in reverse and apply it only to the gas and electric utilities.

Mr. Carson - What is there are others?

Mrs. Orfirer - We'll certainly hear about it in our public hearings.

Mrs. Eriksson - Should we add steam to electric and gas?

Mr. Mansfield - I don't think you have to worry about it. It's not an economic business any way you look at it.

Mr. Carson - If the section is left this way and if the Constitution defines solid waste management as being a utility would this give you the right to regulate them?

Mr. Gotherman - I think they have that right now. They currently have the right of police power to regulate private services within the municipality, which are not regulated by the state: taxicabs, CATV, any number of things the municipality would fix rates for.

Mr. Carson - I'm afraid of what may happen if you start singling out two utilities in here.

Mr. Mansfield - This is why I said originally that I'd be happier if you keep it the way it is and add to the exceptions.

Mrs. Orfirer - I agree that we have to accomplish what we want in the most pragmatic way and not stand on form in the Constitution but I do think that this listing and

and having to add to the Constitution a new service possibly is not good constitutional writing if we can avoid it. Would you be willing, Nolan, for us to present it to the Commission in this way and see if we get any adverse reaction at a public hearing?

Mr. Carson - I have no objection but I guess what we really want to do is make sure that transportation is excluded and solid waste management is excluded. These are problems that we can see that need to be solved.

Mrs. Orfirer - Five or ten years from now there may be problems we don't see now.

Mr. Carson - Right today there is real need to exclude these two things. Can we get the reverse one passed?

Mr. Kramer - Now there are two exceptions and you're adding two more. I think it is not beyond our capacity to look in the future and speculate that there aren't any major categories that in the foreseeable future that you might be adding.

Mrs. Orfirer - As long as we're accomplishing the same thing we might as well do it the most saleable way we can find.

Mrs. Orfirer thanked Mr. Mansfield for being present.

Mrs. Orfirer - Let's move on to 4. There were several suggestions made--one to reverse Roettinger by saying "shall not be construed as a tax." Another was to start the new language with "may use the revenue therefrom" and eliminate the words "may impose such charges" which appealed to me. I certainly understood your reason for recommending that. "May impose such charges for such products and services" and that was the clause that you suggested might be removed. Jack Wilson has suggested restricting it to specific purposes. Then there was also the problem of the conflict about eminent domain, between two governmental units.

Mrs. Eriksson - The first thing is whether you want to do anything at all in this section. We drafted it only because the Roettinger decision has been so widely criticized by writers on the subject, not because there had ever been any great movement afoot to alter the section.

Mrs. Orfirer - It seemed an infringement on municipal power.

Mr. Gotherman - The municipal officials felt that no matter what the Constitution said, the result would be the same--practically, you don't set utility rates to raise revenue. The average citizen views increased rates as a tax. Take the water problem--council raises those charges to operate the water facility, not raise it to produce more policemen.

Mrs. Orfirer - Let us see it as a governmental purpose in the law. They know what the rates are. They know what the bill is. If the rates are going to be going up so much in the private sector would they be going up at the same rate for municipal functions?

Mr. Gotherman - Municipal business functions are like private business functions. Costs are increasing.

Mrs. Orfirer - As the rates for C. E. I. go up, do municipal rates go up?

Mr. Gotherman - As their costs go up.

Mrs. Orfirer - As sharply?

Mr. Kramer - There would have to be a study done to see.

Mrs. Orfirer - What I'm getting at is isn't this in the minds of the people a fairly painless way of raising revenue?

Mr. Gotherman - In the larger cities they have attempted to keep their utility rate down, beyond the point where they probably should have increased them. They have simply subsidized to some extent the operation of water and sewer. The cost of sewer is fantastic in recent years, and that has a direct relationship to the cost of water. So their rates have tended not to rise as rapidly as other utility rates. If you happen to live in a new village that didn't have a sewer plant you have tremendous new charges. I think our people felt that it wouldn't make any difference whether or not you put this in or left it out. The City Manager of Middletown said "I'm not going to recommend to council that we increase taxes by increasing water rates."

Mr. Carson - I had the feeling at the end of the meeting that it wouldn't accomplish anything to change it. By defining solid waste management as a public utility, would a municipality have the power of eminent domain to obtain a private waste collection business?

Mr. Gotherman - If it were for a municipal purpose I think they would.

Mr. Kramer - I don't know of cases where it's been attempted. However, solid waste management is not now a public utility and the question has not been raised.

Mr. Carson - Would the city have the power to acquire the property of a company already engaged in the business? We have a good one in Cincinnati and it operates at a profit and the city is happy with it. I just wondered whether we would be giving the city power to take that company over. I don't think it's a very good idea.

Mr. Gotherman - By amending the section and perhaps making them a public utility are we then giving them the eminent domain power under Article XVIII, section 4? Let's say that's a landfill operation. If it's essential to the city operation for commercial waste, the city could buy it today, without relying on public utility powers, because it's a question of whether it is a public purpose. And I don't think you would want that any other way, really. You would not want your government without a means to provide you with a place to dispose of your solid waste somewhere. And somebody always owns the land. You can very seldom negotiate these kinds of arrangements. Lima is going through that with sludge, the farmers won't negotiate the sale of their farms--they'll probably have to use the power of eminent domain. I don't think you would want to deny any government the right to acquire land to perform their services.

Mr. Kramer - The power to condemn a business may be different from power to condemn property. The power of eminent domain, under the Constitution, is limited to utilities.



Mr. Gotherman - They could if they had the statutory authorization for it. They could go out and condemn a private fire company, couldn't they? Take their equipment.

Mr. Kramer - When you get into the solid waste disposal company, they already have the power to regulate this business--not just regular wages and hours--but actually to regulate the business and its rates, because it affects the public interest. That is really the dividing line between the public utility and the private company.

Mrs. Orfirer - It's already a public interest but it's not a public utility.

Mr. Gotherman - It's more than just the land. The public utility test is being affected by the public interest. I don't think public purpose means you have to go that far. Both the U. S. and Ohio Constitutions would prevent the state from taking my suit without paying me for it, as well as my house and the land that it sits on, yet I suppose if they had valid reason to take my suit for a public purpose they might be able to do that if they paid me. That's what I think Nolan was talking about-- could they take the whole business, not only the land, but the incinerator, chairs, etc. I think they could.

Mr. Kramer - Look at the Youngstown Sheet and Tube case in 1952, when the President seized the steel mills.

Mr. Carson - With transportation, I think that we all feel that this is a public thing and private ownership has struck out, in Ohio at least. With respect to solid waste management, I think we need every resource we can get, both public and private, to get rid of trash that we accumulate and I hate to put an impediment in the way of private enterprise.

Mrs. Orfirer - I wouldn't want to either and if, upon further investigation any of you come up with anything bring it to our attention and we can re-discuss it. What about this problem of co-equal governmental units in terms of eminent domain?

Mrs. Eriksson - There are two questions now. The Blue Ash case was between two municipalities but the recent case, the Britt case, has to do with taking property outside the boundaries of the municipality, private property. The City of Cincinnati tried to take property which had already been taken by another municipality for street purposes. Cincinnati wanted the street for the airport.

Mr. Kramer - An existing municipal street which Cincinnati attempted to acquire for an airport, sought to appropriate that existing street. It's one governmental unit attempting to acquire property of another municipality already being used for a public purpose.

Mrs. Orfirer - It was my opinion that one was a higher public purpose than the other. What do you do in this case, where there's no provision.

Mr. Gotherman - Can't those matters be resolved by statute?

Mr. Kramer - There's no question that the General Assembly can and has granted municipalities powers of eminent domain.

Mr. Gotherman - And they certainly granted the state powers to purchase municipal property.

Mrs. Orfirer - What do you do when you have two municipalities and they both want the land?

Mr. Gotherman - If the state wanted to provide for these certain kinds of airports, it would have the ability to authorize the municipality to take streets. You might have to spend several pages defining them. I think they would have the power to do that. The municipalities involved would probably have to adhere to the statute.

Mrs. Orfirer - What happened with the expansion of the Cleveland airport?

Mr. Gotherman - If they go down to Wayne County there will be trouble with the county commissioners on the highways, because the commissioners are not going to sell voluntarily, and they would be up against Blue Ash. On the other hand I think the General Assembly could pass a statute that would say under what conditions airports are more important than county roads.

Mrs. Orfirer - What happens when it's something besides an airport? Do you have to pass a statute?

Mr. Gotherman - Why not?

Mr. Kramer - The Supreme Court has decided that the constitutional provisions do not permit taking property already devoted to public use. There is nothing to prevent the General Assembly from providing for that. In the constitution, how could you do that? Provide that any municipality acquiring property for the construction of an airport may take any property that is already devoted to public use? I think most everyone would regard that as being unsatisfactory because you could have a municipality wanting to run a street right through a big airport. Or they might want to run a sewer line, right through a big airport. So then you have the Constitution requiring that the acquiring municipality must show that it is for a higher use. What is a higher use? Things might have been simpler had the court gone the other way in the Blue Ash case, and decide by judicial decision which is a higher use.

Mr. Gotherman - Which is determined by the courts to be a higher use. I think that's what you would have to say.

Mrs. Orfirer - But at least they would have to decide it on that basis.

Mr. Kramer - "A higher use" seems to be a very unsatisfactory phrase to use. It should be possible to find something a little more precise than that.

Mr. Carson - The Blue Ash street was needed for airport construction. I'm not sure I necessarily disagree with the Supreme Court.

Mr. Kramer - I think it's easy to conjure up fact situations where this could be a case of real obstructionism. But, of course, if in the future the court is presented with a compelling fact situation, it might find that the Blue Ash case can be distinguished or they will reverse it.

Mrs. Orfirer - Since there's only been one case, perhaps it's not that great a problem.

Mr. Gotherman - I think the Britt case is much more important. It may very well stand in the way of providing regional solutions to local problems. It means that you can't

do much outside your own territory even though you do not have a product limitation because if you have to buy land you can't negotiate and use eminent domain if the negotiations fail. It could be a real problem with all the new environmental regulations--if Columbus is ordered, for example, to serve Obetz and has to expand its sewer lines to do so, it may be difficult to acquire the necessary property. If you had a method by which the larger city--generally, in the area of utilities, the city is more capable than the county--could provide the services areawide . . .

Mr. Kramer - There is statutory power, if not power directly under the Constitution, to take the property outside under the Britt circumstances. The problem is that if they do it under the statute they have to provide payments in lieu of taxes. Once a governmental unit takes the property, it is no longer subject to taxation, but the statute requires the payment of money in lieu of taxes.

Mrs. Eriksson - Do they have to pay forever?

Mr. Kramer - If the city is unable or unwilling to acquire the property if it means the payment of money in lieu of taxes, one way to accomplish this might be a county sewer district, which then could contract with the municipality for the service. Whether there's really any advantage to doing it that way--have the county acquire the land as opposed to having the municipality acquire the land and operate it as part of the system would depend on the individual facts in the case.

Mr. Carson - We have a metropolitan sewer district--it's a county district but run by the city and uses city employees, the city treatment plant and sewer lines, etc.

Mr. Gotherman - That's done by contract in Hamilton county, which is different from Cleveland which is a regional sewer district imposed by the court. There are some cities in Hamilton county that have their own system. In Stark county they're trying to put together a real statutory sewer district. This case may be a hindrance to some future arrangements--it is certainly not a help. If we were talking about a reservoir instead of a sewer line I think it is fairly clear that the payment of money in lieu of taxes would make it impossible for the city to acquire the property.

Mr. Kramer - If the payment of taxes is the only problem, this could be solved by an amendment to the statute. It may of course be difficult to get the General Assembly to change that provision.

Mr. Gotherman - It would be easier to get the people of Ohio to approve it by voting on a constitutional amendment than to get the General Assembly to change that statute.

Mrs. Orfirer - How would we do it constitutionally?

Mr. Kramer - It would relatively simple to revise the language of section 4 to provide for the acquisition of any public utility or property required in connection therewith whether within or without the corporate limits of the city. To make clear that the power of condemnation extends to the acquisition of property by the municipality for the expansion of services outside the municipality. It already has the power to provide the service. It's only a question of how far the condemnation power extends. Drafting would not be a real problem.

Mr. Carson - How do they do this for electric transmission? Do they get rights from the county along the roads to municipalities that they serve? Don't they have to use eminent domain?

Mr. Kramer - I don't know that the question of eminent domain has ever been raised. The Columbus sewer system goes all the way up to Dublin and it is possible for anyone along the way to refuse to sell.

Mrs. Orfirer - I'm not so sure that I think they should be able to go into another community and take property off the tax duplicate in that community without making some provision for paying taxes.

Mr. Gotherman - It would be like having the county do it. Or the state.

Mrs. Orfirer - But the other community is part of the county or part of the state, but it is not part of the municipality which is taking the property.

Mr. Kramer - Under the Britt case it is still possible for a municipality to go outside to acquire property so long as the purpose is to serve the residents--such as a reservoir.

Mr. Gotherman - But what if it is a mixed use? We don't have the case on that yet. As Hoover Dam is.

Mr. Carson - Or you can build your sewage treatment plant outside--to take the wastes from the city itself. The only question is the right to take property to build lines only to serve people outside.

Mrs. Orfirer - Who's being deprived of the taxes if the city can take that property?

Mrs. Eriksson - A school district, some township and county taxes.

Mr. Kramer - If Columbus needed that exact same land in order to serve the residents of Columbus, there is no question about the ability to take it.

Mr. Gotherman - One of the results of that case, whether anyone ought to get any tax money or not, may be that Dublin will have its own sewer system located upstream from Columbus, with their effluent coming downstream. There is more than one way to have a metropolitan sewer system. In Franklin county it makes a lot of sense to let Columbus provide water and sewer services. Because they already provide it to a number of existing communities. But I don't know whether we have a recommendation right now about a constitutional change. Perhaps the option is to go to the statute and try to change the statute.

Mr. Carson - Could Dublin establish its own sewer lines and use its power of eminent domain to condemn the land between there and Columbus to run its effluent to the Columbus treatment plant?

Mr. Gotherman - That's a possibility, but they may not have the ability to do that because of financing. And Nolan suggests that the county may be able to condemn this land and have the city pay them for it.

Mr. Kramer - You'd have to have a county sewer district for the county to have the power to do that.

Mrs. Orfirer - It seems to me there are several good reasons to change the Britt case--rather than having each community constructing its own sewer system as suggested.

Mr. Gotherman - Maybe we should give some thought to just how broad the case is. Is it relatively unimportant or will it constitute a major hindrance? Theoretically, it's a bad case for municipal home rule but we need to consider its practical implications. Will it prevent Dublin from connecting with Columbus or are there other, practical ways to do that? I think we ought to contact Columbus and find out just what this case means to them. Perhaps those who have to live with this decision should be given an opportunity to think about.

Mr. Kramer - We should also consider this question a mixed use--where the property is acquired partly for supplying residents of the municipality and partly for supplying persons outside the municipality.

Mr. Gotherman - We could go check with Mike Gable, a member of our committee, and see what kind of a practical impact the case will have.

Mr. Carson - I would specifically like to know whether there are any other routes open under existing constitutional and statutory provisions without using the existing statutory authority which would require them to pay the taxes. For example, could you turn the coin over and have Dublin acquire the property? Or the county?

Mr. Kramer - We could think about the possibilities. Dublin must already have a sewer collection system and what we need to do is get it to Columbus to be treated there. The problem is probably economic.

Mr. Gotherman - The smaller community doesn't have the capital to put forth to make the investment for acquisition.

Mr. Carson - I am concerned about the principle involved here and I think Linda is too.

Mr. Gotherman - This is an example of how a major city using its own powers could help solve regional problems.

Mr. Carson - Linda expressed concern about a city using its power of eminent domain not to serve its own people but to extend its service beyond the limits.

Mrs. Orfirer - But once they can already go in and condemn the property and it's not for the good of the community where they are condemning it, then I don't see what difference it makes.

Mr. Carson - I'm not opposed to the city condemning outside its boundaries to benefit its own residents because there may not be any other place, geographically, to put a sewage treatment plant. Or to build a reservoir.

Mrs. Orfirer - There may also be compelling reasons to try to prevent each community from building its own treatment plant.

Mr. Carson - Should it be a municipality that does it or should it be a county or some broader jurisdiction?

Mr. Gotherman - In Franklin county it is impossible for anyone else to duplicate what Columbus has done. In Hamilton, the county and the city got together to handle most of the problems.

It was agreed that Mr. Gotherman would contact Mike Gable, Mrs. Eriksson would contact John Duffey, counsel for the persons opposing Columbus in the Britt case, and Mr. Kramer would list the various possibilities for accomplishing what the Britt case had proposed to accomplish.

It was also agreed that no recommendation would be made in respect to the Roettinger case.

It was also agreed to recommend the modification of Section 13 of Article XVIII and the repeal of section 6 of Article XIII as proposed in the draft.

Mr. Kramer - There was even a statement made in the discussion in 1912 that they intended to repeal section 6 of Article XIII but it got lost somewhere.

Mrs. Orfirer - We haven't looked at section 5. Are there any problems?

Mr. Kramer - I don't know that this poses any problems for municipalities or that it is possible to define in the Constitution, or even desirable to do so, what ordinances are subject to referendum.

Mrs. Orfirer - Does anyone disagree? Then we assume that this is not a problem needing clarification in the Constitution. We assume that section 5 will be left as is. On section 10, we were going to discuss repealing.

Mr. Kramer distributed copies of the 1912 debates on section 10, and some court decisions relative to it. The section authorizes "excess condemnation" by municipalities.

Mr. Kramer - These would be revenue bonds secured only by the property being taken and would not be general obligations of the city. Secured by a mortgage on the property. The framers of this provision set out to accomplish the ability to condemn more property than is really needed for the immediate project.

Mrs. Orfirer - What about this business of the city being in the real estate business? Being able to make a profit on the later sale of this property?

Mr. Kramer - That was how it was supposed to work. In 1930, in a case in which the City of Cincinnati attempted to make use of this power in a case involving street widening in which they attempted to condemn three other parcels--more than was necessary--and the U. S. Supreme Court said that the city did not show that it was in furtherance of the public use. The Court upheld the prior federal court decisions that the city, under the 14th amendment, did not have the power--absent a showing a necessity of taking for a public purpose--to appropriate it. The Court was saying that the Ohio Constitution could not have intended that the city have the power to take, unrelated to a public use, or that if the Ohio Constitution is to be upheld under the 14th amendment, it would limit its effect to be in accord with the 14th amendment. If the taking is to be within its authority the city is called upon to specify definitely the purpose of the appropriation. I think you come back around in a circle--if you have to specify the purpose of the appropriation--a public purpose--it must be related to the other purpose of the appropriation, then it isn't really excess condemnation.

Mr. Gotherman - Of course that is an old case and there has been a lot of 14th amendment case law since that time--perhaps the section has some validity now that it



didn't have then. We have land use laws now that are very different from what we had then.

Mr. Kramer - But the notion of "excess" condemnation I think is almost unconstitutional on its face. If it's really excess, it's excess for any purpose--whatever purpose the city is given by statute to acquire property, it's not excess.

Mr. Gotherman - But the case doesn't say that the section is unconstitutional, only that it was not constitutional as applied to the facts in that situation.

Mr. Kramer - But the city tried to uphold the proposition that it didn't have to specify a public purpose in condemning the property, and the court held that it did. If the condemnation is in furtherance of a public purpose, you have to specify what it is. The Ohio Supreme Court in 1931 also held that it would not sanction a taking without showing a public use and necessity. The City of East C<sup>L</sup>eveland was attempting to acquire property on both sides of a street expansion.

Mr. Carson - I don't think the city should be in the real estate business through its power of eminent domain.

Mrs. Orfirer - Not just for the purpose of making money.

Mr. Kramer - As this has been interpreted, I do not believe it adds anything to the power of a municipality to condemn property. This is not related to utility matters, it relates to any condemnation. It was an attempt to add something to municipal powers over and above the power to condemn for a public purpose.

Mr. Carson - The language of the section is "in furtherance of" a public use. Don't those words have any meaning?

Mr. Kramer - Cincinnati was widening 5th Street and the city council, in its ordinance to appropriate the property, said that in furtherance of the public use of widening 5th Street we are appropriating the additional property. There were no findings as to the manner in which this public purpose was being served by the acquisition of the additional property.

Mr. Gotherman - Isn't the court really just saying that if you have a public purpose it is always subject to judicial review?

Mr. Kramer - But that is already the law. Section 10 really does not add anything to a city's power to acquire property for a proper public purpose. If you are widening a street and you need property on either side in connection with that project certainly the power is already there and you don't need section 10 for that purpose. Under section 19 Article I all property is held inviolate subject to public need. If you can show a proper public purpose, you can take the property.

Mrs. Eriksson - In the true meaning of eminent domain, the section is redundant, and in the meaning that the framers intended to give it, it's been declared unconstitutional.

Mr. Kramer - Yes, I think that if the ordinance had stated that the purpose of acquiring it was to resell it, the court would have struck it down.

Mr. Carson - If you are building a highway today and you want to acquire twice as much as you need for future expansion, can you do that?

Mr. Kramer - Yes, if you have reasonable grounds to believe that future expansion will be called for. Or if it is really need to protect the right of way--that sort of thing. It is a matter of what is reasonable in connection with a public purpose. Otherwise, the state could appropriate all the property in the state.

Mrs. Orfirer - Let us hold this and give further review to it at the second meeting from now, after John has had time to consider it further and we have had time to read these cases. How about section 11?

Mr. Kramer - This is a limitation on assessments and that has been enacted as part of the statutory law in Section 727.08, which mirrors the constitutional provisions. I don't know of any problems that municipalities have with this section, nor do I know of any sentiment for change. It could be, and is, provided by statute, but if you wanted to repeal the constitutional section it would appear on the ballot in terms of removing the limitation and might be difficult to explain to people that it is covered by statute.

It was agreed to recommend no change with respect to section 11.

The next topic was the indirect debt limit.

Mrs. Eriksson - You have a new draft, which is the same as the prior draft with the addition of the last sentence.

Mrs. Orfirer - In the 9th line where it says "making such provisions for timely payment of principal and interest" wouldn't it be sufficient just to say "make such provisions"? And in the next line where it says the "treasurer or other officer" couldn't we just say "the officer"?

Mrs. Orfirer also queried whether the expression "including moneys first received" made it clear enough that the governmental unit was required to make the payments.

Mr. Kramer noted that all these expressions are clearly understood by bond counsel, and that the section is modeled on the provisions for state debt which have been recommended by the Commission. He stated that he believed the obligation to set aside and pay from moneys first received, to the extent those moneys were not otherwise pledged, was mandatory. This provision was added for emphasis. It requires no action by the municipality.

It was agreed to recommend to the Commission the draft for section 11 of Article XII, to deal with the indirect debt limit as presented to the committee and discussed today and at the prior meeting.

The next topic for discussion was pre-emption. Mrs. Eriksson explained that in Ohio cities acquire the power to levy taxes directly from the Constitution but this power is limited if the state adopts the same or a similar tax unless the General Assembly specifies its intention not to pre-empt. There are several possible constitutional positions that could be taken, and which were considered by the Finance and Taxation Committee. The present rule could be written into the Constitution, or it could be reversed. Because the problem affects only municipal corporations, it was

referred to this committee. Considerable opposition arose in the discussions of the Finance and Taxation Committee to putting any language regarding pre-emption in the Constitution. The principle of pre-emption presently is one enunciated by the court and is not found in the Constitution at all.

Mr. Carson reviewed the procedures and discussions of the Finance and Taxation Committee on the subject and the positions taken by the Ohio Municipal League and the Chamber of Commerce.

Mrs. Orfirer questioned whether the Constitution couldn't require the General Assembly to specify its intention to pre-empt or not to pre-empt. Mr. Gotherman noted that the General Assembly usually does this now anyway because there is great awareness among both members of the General Assembly, dealing with state taxes, and local officials, dealing with local taxes, about the problem and the necessity to make clear in the legislation whether or not pre-emption is intended. It was agreed that it would serve no useful purpose to put in the Constitution a requirement that the General Assembly specify whether or not it intends to pre-empt unless a rule is stated as to the results when the General Assembly fails to specify its intention, and that stating the rule is what arouses the controversy, since the municipal officials prefer to leave the situation the way it is rather than specify the present law in the Constitution.

After discussion, it was agreed that no recommendation regarding pre-emption would be made.

Ohio Constitutional Revision Commission  
Local Government Committee  
May 30, 1974

### Summary

Present at the May 30th meeting held in the Hollenden House in Cleveland were committee chairman Mrs. Orfirer, members Eps. Fry, Russo, and Celeste, Mr. Gotherman of the Ohio Municipal League and Mr. Kramer.

Mrs. Orfirer opened the meeting by reviewing the sections agreed to at the last meeting for the benefit of those who had not been present. These were: section 13 of Article XVIII (with repeal of section 6 of Article XIII); section 12 of Article XVIII (utility bonds). Mr. Russo questioned whether the latter is broad enough, and Mr. Fry stated that he wanted to give local government all the tools possible, and not mandate responsibilities without providing funds.

Mr. Kramer: These are revenue bonds for which only the revenues are pledged. What we've changed is to give the issuer and the purchaser a chance to negotiate as to the kind of security needed - if the purchaser doesn't need the security of the mortgage and franchise, it will no longer be necessary to give these. Now it is mandated.

Mrs. Orfirer: The committee further decided to recommend no changes in sections 4, 5 and 11 and to make no recommendation regarding the addition of a pre-emption provision to the Constitution. As you know, there is nothing there now regarding pre-empting tax sources.

It was stated to the committee that everyone knows what the rules are, and the general assembly is aware of this problem and is urged in all tax matters to say it either is or is not pre-empting, and everyone seems satisfied.

Mr. Russo: I prefer to get it into the constitution. We've really strapped local government - they can't go anywhere unless the legislature determines. Cleveland can only increase the income tax or a real estate levy. I think a big city should have access to any source of tax the state has.

Mr. Gotherman: We went through this with the taxation committee and what it boils down to is whether you have pre-emption codified in the constitution, which is what the Chamber of Commerce wants or whether you leave it the way it is which is what we would prefer - in reality, today, it's a legislative matter anyway. Cities might have the ability to levy a sales tax, but there would likely be a bill prohibiting it if they did. The general assembly has control of the taxation.

Mr. Fry: If the people of a community are amenable to increased taxation on any of these levels, that local government unit should have the right to do it. The state could alleviate a lot of local problems by better use of its data processing techniques. People should take the responsibility at the local level to raise money for what they think is right.

Mr. Russo: The sales tax is the greatest source of income and the easiest to get - many people will accept sales tax in lieu of income tax at the local level but we don't have the authority for that. We couldn't even put that on the ballot if we wanted to.

Mr. Kramer: The legislature could authorize it.

Mr. Russo: I'd rather the legislature would have to say "you can't do that" because it's harder for them to say that.

Mr. Gotherman: This is really a political problem. The taxation committee recommended just what you said but the Chamber of Commerce is opposed to that, and wanted to codify the present rule which is that the tax source is pre-empted unless otherwise specified. We would rather leave it alone than put that in the constitution, because we would still be able to go to court this way. But it is possible, legislatively, if you have the right cause, to get the legislature to act to secure additional taxing powers for local government. This week in the Senate we have gotten the Senate to give transit authorities the right to levy an income tax.

Mr. Russo: But the problem is that you have to go to the legislature to get the power.

Mr. Gotherman: Although this committee might start out helping local government, we think we would be up against such opposition that the end result would be greater restrictions than we have now. We think we can handle the present situation better than we could if something were put in the Constitution.

Mr. Fry: I'm not satisfied that we shouldn't give municipalities more options.

Mrs. Orfirer: After I heard all the discussion about pre-emption, it seemed to me that if all of these forces are against putting something in the constitution and if the municipal league prefers to leave it alone, and presumably we would be helping the cities, then who are we doing it for? If they think they can get what they need the way things presently are, perhaps we should leave it that way.

Mr. Fry: But perhaps the people should be given the opportunity to say whether they want this or not.

Mr. Russo: I think we can go ahead without the Commission's consent and maybe draft something for the House just to see what the reaction will be.

Mrs. Orfirer: Sure. All I can say to you is this - Those opposed will try to turn it around and say that all taxes enacted by the state are pre-empted unless the general assembly says it isn't. And then the local governments are going to be in a worse position than they are now.

It was tentatively agreed to recommend repeal of Section 10. This is the "excess condemnation" section.

Mrs. Orfirer: Gene, would you brief us on what the decisions have been and why we think that it may be used for the urban development and so on.

Mr. Kramer: Article XVIII, Section 10 provides basically for power for municipalities appropriating or otherwise acquiring property for public use, so they may, in furtherance of such public use, appropriate or otherwise acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriated to preserve the improvement made ...and then bonds may be issued to supply the fund in whole or in part to pay for the excess property. Those bonds are lien only on the property, and are revenue bonds payable only from the revenues from that property. In the

Debates of the 1912 constitutional convention, you find that the drafters of the provision looked upon it as a means basically of allowing a municipality, when it's making a public improvement, to acquire either by purchase or by condemnation more property than is needed for the improvement, then to sell the property with an increased value because of the improvement and make enough money to offset a substantial portion of the cost of the improvement. That seemed to be the reasons behind it in the Debates. There have been cases decided in the United States Supreme Court and the Ohio Supreme Court on this section. The U.S. Supreme Court case when the city of Cincinnati attempted to employ this procedure where they were widening Fifth Street and acquiring a 25-foot strip of property for the widening, and also acquiring several other tracts of property some of which did not even abut on either the street or the 25-foot strip that was being acquired. In the resolution and ordinance providing for the appropriation, the city council only stated that the reason for the appropriation was being in furtherance of widening Fifth Street and necessary for the complete enjoyment and preservation of public use - not really specifying exactly why it was necessary. The property owners sued in the federal court to enjoin this appropriation as a violation of the 14th amendment guarantee of no taking of property without due process of law and that the property wasn't really needed by the city. The court recognized the argument of the city that this kind of excess condemnation can have one or more of three purposes: one, is the avoidance of simple remnant lots since when you are acquiring property, and the property that isn't being acquired is so small or irregularly situated that it really becomes unusable, that you should be able to acquire all of it even though it isn't strictly speaking needed for the improvement to the preservation and amplification of the improvement. You might need some for reasonable future expansion or to protect a right-of-way from being blocked on a road. Third, the recoupment of expense in increased values. Third is the kind of thing that the drafters were looking at in 1912 - selling the property at a higher price to pay for the improvement. Both the Federal District Court and the Federal Court of Appeals held that the real purpose was the third - this recoupment. The city's defense was that they really couldn't say exactly what it was going to be used for but at least the purposes were proper and authorized by the Ohio Constitution, and they didn't agree with the lower court's contention that it was going to be used only for recoupment. But the U.S. Supreme Court said that the appropriation could possibly be for a case that was impermissible under the 14th amendment, and held that, in order for the city to justify this appropriation of property, it had to specify clearly the purpose of the appropriation and that since they did not specify this, it was a violation of the 14th amendment. Then they were enjoined from acquiring this property. A later case in the Ohio Supreme Court looked to the provision again in connection with street extension in the city of East Cleveland where they were acquiring 100 feet of right-of-way on either side of the street. The claim made by the city was that this wide area on either side was necessary for the full enjoyment and use of the street widening. The testimony was taken on the city's need for lateral support because the road slopes up on both sides of the street. Testimony showed that only a very small amount of that which was being actually taken was needed for that purpose and that they really hadn't shown a need for the rest of it except possibly to use as a park or something. The Ohio Supreme Court held that the municipality not only has to state a valid purpose for the appropriation but also has to provide the necessity of it and that they had not carried the burden in that case. These cases were interpreting this provision that went in in 1912. Where we're left now is that it seems pretty clear from the cases that you may not use this provision for acquiring property just for the sake of re-selling it to recoup part of the cost. It has been interpreted narrowly to mean that its use for the excess property must be in furtherance of the improvement



that you're making, you have to specify it for that, and you also have to prove that it's necessary. There are cases in other states dealing with similar provisions which indicate that where it's one of the first two purposes - that is, to prevent remnants being left or if you can really show that it is necessary and you're protecting the improvement somehow, that it may have some vitality. It's been very little used during its life. But I think it's not possible to conclude from the cases that it has no possible beneficial application for municipalities. In the case of State ex rel Bruestle vs. Rich, which is a basic case in Ohio dealing with urban renewal power for municipalities to acquire property from property owners in an area which is blighted or is in danger of being blighted, and then to clear the property and sell it for redevelopment, the court considered the question of the degree of title the city could acquire, conceding then that in some cases it might be possible to require less than a freehold interest, a total interest, and require something less like a leasehold estate or a terminable fee. But usually the city will go ahead and acquire the fee interest. The court in answer to that said that however, even if purchase or condemnation of the fee simple interest of the real estate involves acquisition of a greater interest in such real estate than actually necessary to accomplish the purpose of eliminating slum conditions and providing against the recurrence, this acquisition is now specifically authorized by section 10 of Article XVIII of the Constitution and the court quoted that. So section 10, as it was used in this case, forms part of the underpinning of the urban renewal power that municipalities can presently exercise, so that, on that basis, it does have a good deal of importance. The Court might have reached the same conclusion without section 10, but the fact is that it was referred to on that basis - I think it is important that it be retained as part of this municipal power.

Mrs. Orfirer: As we went through this we felt, let's repeal it, because the interpretations have made it not useful and in the sense that you would be able to acquire what was needed without having this. But the urban renewal case indicates perhaps we should leave it unchanged.

All Agreed.

Mrs. Orfirer: We also discussed the Britt case, and this concerns the question of eminent domain outside the municipal corporation limits for the expansion of the utility in order to serve people who are not in that municipality.

Mr. Kramer: The point of the case was that the city was attempting to rely solely on power derived directly from the constitution to exercise its power of eminent domain to condemn a strip of land for a sewer right-of-way. The court held that in that particular circumstance, where a municipality is attempting to acquire property outside the corporate limits, serve only people outside of the corporate limits, that this power did not flow directly from the constitution. Now, there is statutory authority to undertake this kind of condemnation. The problem from the city's standpoint is that the statute requires that if a municipality acquires property outside of a municipality for this purpose it has to make payments to the jurisdiction where the property is located in lieu of the taxes that the property would yield had it not been condemned and converted to a public use.

Mr. Gotherman: I have gone to Michael Gable who met with the Commission once before to inquire of Columbus whether or not this meant that they could not effectively service Dublin which would mean that Dublin would have its own sewer system. I think we will hear from him before the next meeting on June 5.

Mrs. Orfirer: We're going to start on townships, and I think you may be aware that there is very little on townships in the constitution. You're going to hear a great deal about some of the problems that they are having. We can leave this problem to the general assembly. Or we can determine whether we want to do something about it in the Constitution, and I think before we get into any of what the problems are or what the possible solutions are that it's very important that we think out loud together about where we see our role and responsibility in this. My feeling on it is that we're discussing a basic unit of government, and that if the constitution isn't to provide for basic units of local government, I don't know what it's for. I think this is a role of the constitution. I think the legislature is being lobbied very strongly on this.

Mr. Fry: If we can devote some time to this, I think it's worthwhile, because the members of the legislature aren't going to be giving it the attention it should have - they don't have the time.

Mrs. Orfirer: The legislature has before it bills asking for home rule for townships. The local government services commission committee report came out with a recommendation that urban townships be given all powers not specifically denied, which is more than municipalities have. You're familiar with this limitation about not being able to incorporate within three miles of another municipality unless the municipality agrees to it.

Mr. Celeste: I have understood that the Cincinnati townships were dividing and conquering on annexation. They would want to have municipal services so some of them petitioned for annexation. Others would immediately petition for incorporation which divided the people who wanted municipal services into two camps which meant that you never had an annexation. So incorporation was used as an anti-annexation tool in the Cincinnati and Columbus areas primarily. In Columbus it didn't work particularly well, but in Cincinnati it did work and therefore you have the townships left. The municipalities passed legislation, with the support of the township trustees association at that time, to prohibit incorporation within three miles of the existing municipality so that they could continue to grow reasonably. That's the history of it in a nutshell.

Mrs. Orfirer: Various suggestions with respect to townships are they should have all powers not specifically denied, powers be accorded townships to oppose annexation, that incorporation be made easier, that ordinance powers be granted in specific areas, that they should be able to impose an income tax. These are some of the things. There are several things that we can do. I would like to have us begin to think about them here tonight. There is a split between urban townships and rural townships - everyone seems to be fairly satisfied, as far as I know, with what's going on in the rural townships. Some people propose abolishing townships altogether, having the county take care of the needs of the rural townships.

Mr. Fry: For the rural township, it's pretty easy to say that the county will take charge or take care of them.

Mrs. Orfirer: Yes. If you were going to abolish the urban townships, obviously they would incorporate or they would be annexed. Another proposal is the classification of townships. The same way that you classify municipalities into cities and villages you could classify townships into rural and urban. Then you get into the question of what kind of powers you do want to provide for the urban townships. Abolish the 3 mile rule? I think you have to determine whether

you really want this proliferation of corporations. I spoke with Gene briefly about the idea of asking them when they reach a certain population density whether they want to be annexed or whether they would want to incorporate. Gene, you might talk about your reaction to that.

Mr. Kramer: A township can bound on several municipalities. The proposition is that when a township reaches a certain population density or a certain valuation, perhaps the same sorts of tests that the legislature provided for the ability to incorporate, provide for a mandatory vote for either incorporation or annexation. But the difficult question would be - annex to which city? That would arise in many cases and also the question to be considered as to whether the city or village that's adjacent or cities or villages would be equipped and willing to take on this additional territory too. Sometimes it's more difficult to take on a populous area which may have problems because it has a lot of population and not all the municipal services. If the municipality has to take on all of that territory and be responsible for it - sewers, water, police, and fire protection, it could overload the city.

Mrs. Orfirer: You could have the tail wagging the dog if it's a lot bigger than the new territory.

Mr. Kramer: Right; the new territory could be substantially larger and more populous than the municipality.

Mr. Russo: Are there any townships that are larger than the municipalities?

Mr. Kramer: Many are larger in territory, and some in population. In Mahoning County, some of the townships are 30,000 and 40,000 people.

Mr. Fry: This is true of Cincinnati, and it's true in Montgomery County.

Mr. Gotherman: I've worked on a compromise that would result in negating the 3-mile limitation by legislation. Have a petition and have a ballot go to the county commissioners, show that they meet certain standards, and then the people vote for three alternatives. One is to annex to the most populous city within three miles, one is to incorporate as a new municipality, and one is to remain just the way they are. The township trustees have opposed that because they simply want to maintain township government as it is today but give them more powers. The city officials from Youngstown and Dayton - Cincinnati didn't really care about it - there was no clash in that area. Those townships will eventually be taken by suburbs, anyway. Another idea would be to create a body which would investigate that particular case of a particular township which reaches a certain size and begins to have these urban problems and that would make some determinations with regard to annexation or incorporation, or whatever, to hold hearings and make recommendations to the county commissioners.

Mr. Fry: Who makes the final decision?

Mrs. Orfirer: The county commissioners make the final decision now, don't they, with the approval of the city that's annexing, if it's an annexation?

Mr. Kramer: It's a requirement of a vote in a township in the case of an annexation proposed by the municipality or to have a petition or a majority of the property owners in the area when it's proposed by that method.

Mrs. Orfirer: When it's initiated by the property owners in the township they apply to the county commissioners, and if the county commissioners agree then it's up to the council of the municipality to accept it or reject it, and there's no vote by anybody. It can be partial annexation, it can be total annexation, it can be corridor annexation - there's all kinds of problems involved. When it's initiated by the municipality, the council may petition the county commissioners and it can be granted if the land is owned either by the city or the county. If it's not publicly owned, then there is a vote throughout the entire unincorporated area when the city proposes it.

Mr. Gotherman: A good example of that being a useful way of getting the thing before the people is the Hudson township's proposed merger which was just voted on recently and went down. The city of Hudson proposed to annex the whole township. The only people that can vote are those that live in the unincorporated area of the township. In this case, since everybody was affected, it made sense to vote on it and so that was a logical way to get the issue before the people that were affected in the entire township. But if you wanted to use it just for 5,000 people, and the township was 25,000 people total, or even 7,000, everybody gets to vote, and you could never get it approved. And there are instances of people voting who are not residing in that territory. That was never used except in the unusual situation where there is a proposed merger of what's left of the township with a particular municipality.

Mrs. Orfirer: It's never used to get the vote through the whole incorporated area because you wouldn't get it. For incorporation, a majority of the adult freeholders petition the county commissioners who may grant it except that they may not incorporate within the three miles without the city passing and approving a resolution. And then the other exception is that they may incorporate if they have tried in the last two years to be annexed and the municipality has refused to accept them. That's within the 3 miles. Has any city ever refused to annex?

Mr. Gotherman: There have been a couple that have granted permission to incorporate. One was Valley Hi, the ski resort. Another was Rockville. They originally granted permission to a big resort area with several private buildings - nice homes on the lake - to incorporate, and I understand they were trying to revoke that. That will probably wind up in court whether they can revoke consent once they've given it. Normally, they don't try to incorporate unless they're assured that they can get permission. There have been very few incorporations in Ohio since the enactment of that bill - maybe 4 or 5.

Mrs. Orfirer: It's serving its purpose.

Mr. Gotherman: It is effectively eliminating new municipalities.

Mrs. Orfirer: Then we get back to the question of what are we going to do with these big urban townships. What do you think of this idea of some kind of a body to recommend to the county commissioners?

Mr. Russo: Basically the voters are going to make a final determination. It's a very emotional issue.

Mrs. Orfirer: But it's not up to vote at this point. If you're going to annex, take the first case where the property owners request it of the county commissioners and then nobody votes. So there is no vote involved there at all.

Mr. Kramer: But it takes a majority of the freeholders to petition it.

Mrs. Orfirer: So you can have some business property that's on one end of the township and they decide they would rather be in the city where they get all of the city services or for tax reasons, or whatever, and then these handful of people can decide that they want to do it, and leave the whole rest of the township without any industry.

Mr. Gotherman: They don't automatically leave the township. The current statute permits the city to petition to have them excluded from the township. But they do not automatically leave the township when there is an annexation, the city is still a part of the township unless there is a separate procedure had before the county commissioners to eliminate or to reform the township boundaries to exclude them.

Mrs. Orfirer: I just can't understand how you annex to an incorporation and you still sit in the township, and you pay taxes to both?

Mr. Kramer: The only case in which a township is eliminated is where it becomes co-terminous with a municipality.

Mr. Fry: I think the basic question here is whether this is something we have to write in the constitution. It's pretty complicated to put in the constitution.

Mr. Russo: I much prefer to leave the concepts entirely out of the constitution.

Mrs. Orfirer: I agree with that. I just think that there ought to be something in the constitution about the powers of townships.

Mr. Russo: Townships are much more politically powerful than we think they are. They have a good strong handle on the legislature when they need it. We've got a division of thoughts on them because they are urban and rural and they have nothing in common outside of the fact that, as you say, they want something for nothing - still maintain the township and get all of the powers not granted to them and that's it.

Mr. Gotherman: We feel that county government is much more viable in the future than it is now, but that once you've created townships in urban areas becoming municipalities under another name, it's going to deter the reasons for municipalities. And also, it tends to eliminate growth under existing powers. That's our case in a nutshell. Several years ago we did a study for the National League of Cities on the manpower training program which involved municipalities, counties and townships. Mr. Hummel gave us a list of urban townships having more than 20,000 population. I think there were about 15 of these. And we found that there were about 4 or 5 that we didn't realize had disappeared from the state of Ohio, not because they dissolved but because they'd been annexed.

it appeared

Mrs. Orfirer: In the Local Government Services Commission, they don't want to incorporate because they don't want to take on the whole structure of municipal government. They want the powers, but they view the structure as being too complicated.

Mr. Gotherman: In a way you've already done some of this. If you recall, when we were haggling over Article XVIII, section 2, one point that we were not hard to get along with was on the clarifying that the general assembly has the right

to restructure boundaries and that the municipal home rule powers do not interfere with that. We don't really think that they do now but in case they do, you've clarified that so the General Assembly could in essence adopt a boundary commission that could adopt any of these proposals and could provide any solution for local government structure that they want to.

Mr. Kramer: I would suggest as a constitutional matter that if there is validity to the claim that the so-called urban townships have special problems that the rural townships don't have, and that there is a present inability for the General Assembly to provide differently for the two kinds of townships because of the requirement of uniformity, a provision permitting classification would be helpful. We've had a number of cases dealing with attempts to classify counties in various ways, and where the cases have gone to the Supreme Court and nearly all of them have struck down attempts at classification. I think that in townships that's a very real problem and the attempt to classify townships into urban townships and rural townships and provide different forms of government, that you have a case that's going to have to be resolved by the Supreme Court. It would be my judgment that it would probably be held unconstitutional if it were done on that clearcut basis. One thing that could be done constitutionally to provide for the ability of the general assembly to classify townships - perhaps into not more than two classifications, and leave it up to the general assembly to provide how they would be classified - not on a rigid basis. This is a constitutional solution to what has been advocated as a problem. As to the second point that Linda raised, the objection is made that townships want to be townships. They don't want to incorporate because they don't want to take on the full structure of municipal governments provided for in the statutes. A possible solution to that might be to provide in the section dealing with municipal charters that a proposed charter could be submitted within a township which would become effective at the time of incorporation, so that they would not be required to incorporate first, take on the statutory form and then submit a charter if they wanted to have a different form. Now, this would not help solve the problem of the 3 mile limit. You'd still be faced with that as long as it's part of the statute. It just provides a means of incorporation and moving immediately to a charter form of government.

Mr. Russo: The townships want to amend S.B. 220 which is the county-power bill to include townships.

Mr. Fry: What Gene's saying would be in answer to this, and a more permanent answer than the bill.

Mrs. Orfirer: You mean to let them incorporate and charter at the same time? So that they could choose their own form?

Mr. Kramer: This is a problem involved with incorporation. This approach does not in any way change the incorporation and annexation policy. If the township wishes to incorporate they could do so initially with a charter form of government rather than having to convert, which is expensive. Provisions dealing with municipal charters are all contained in the constitution itself, and only a municipality can adopt a charter.

Mr. Russo: Anything we grant townships in the way of powers is in direct conflict with the county concept of government and will work detrimental to getting any regional kind of government.

Mr. Fry: I don't think we have that conflict. I used to feel it was a conflict



but I like the idea that we're going to put it on the ballot and let people vote. In recent years, I've become convinced that the Ohio General Assembly isn't going to give the personal attention to the things that they will get when they're put in the ballot for consideration.

Mr. Russo: If we give the same powers to the townships as to the municipalities, they're going to have 66 structures to deal with in Cuyahoga county. I'd rather have them disappear gradually if we possibly can.

Mrs. Orfirer: I don't think we're here to write them out of business in the constitution. I think we're just here to solve some of the problems of urban townships as best we can.

Mr. Russo: If you're letting them into business by giving them real powers in essence you're negating the goal that we have for the counties. If we want to go for county or regional form of government, when we give townships that other thrust, then we're adding more enemies to the concept.

Mrs. Orfirer: I agree with you, Tony, and there is obviously already a way for them to go - to incorporate. Now if they want to get rid of the 3 mile limitation, that's up to the legislature.

Mr. Russo: My argument is not the 3 mile limitation, but pay the penalty of incorporation if they want to incorporate.

Mrs. Orfirer: What's the penalty?

Mr. Gotherman: There are some penalties involved in terms of cost (roads, bridges, etc.).

Mr. Russo: In Warrensville township, the state has to run out there, or the county, I'm not sure which, to maintain Route 8 because they're not going to do it. That's a benefit of being a township.

Mrs. Orfirer: I thought townships did maintain their own roads.

Mr. Gotherman: That's township roads, not a state highway.

Mr. Russo: They want that benefit by remaining a township but won't accept the penalty of being a municipality and maintaining it themselves.

Mr. Kramer: What some people call penalty could be called responsibility.

Mrs. Orfirer: I think there is a great desire on the part of township people to maintain their townships. I agree with you that when it gets to be certain townships and if they don't have the powers or the structures to deal with the problems they're having then they should change their structure.

Mr. Gotherman: I was interested in ticking off the powers that they don't have, which Nolan started to do at the last meeting. The only powers they don't have are ordinance making. The general assembly could give them that power. They do have some resolution-making power. So they do have some legislative powers but not total legislative powers.

Mrs. Orfirer: They don't have the power to levy an income tax. But they have a

part of the inside millage.

Mr. Kramer: They can submit tax levies to the voters. There are many purposes for which tax levies can be voted in a township.

Mr. Gotherman: They're in the same position as municipalities, and that's because outside of the income tax, there is no taxing powers that are the same as our tax. Their taxing powers are about the same as our taxing powers really.

Mrs. Orfirer: You mean they just haven't been granted as much by the General Assembly as municipalities have, is that the idea?

Mr. Russo: I think so. The fact is that they have no legislative authority, but they have backing.

Mr. Gotherman: But they have complete services. County service departments handle the county building department problems but really there aren't that many powers they don't already have. Maybe they don't have as much power as they would like to have.

Mrs. Orfirer: What are the problems that are burdening them that they are going to come to us and say they can't handle?

Mr. Celeste: I'm not sure. When you analyze that, it seems to me that it's not quite correct to say townships don't have powers.

Mr. Fry: Are they allowed to elect their administrator now if they want to?

Mr. Celeste: They don't have any alternative form of government.

Mrs. Orfirer: Under S.B. 220, as the townships want it, they're a municipality.

Mr. Kramer: With probably greater powers than non-chartered municipalities.

Mr. Gotherman: It gives them the powers that you gave counties...

Mrs. Orfirer: It would be defeating what you give to the county.

Mr. Gotherman: Townships want the power not to become part of a municipality and if you make them a municipal corporation, there's never ever any reason why a business or a group of people would want to annex a municipality. And that's the real attempt behind what they're asking for.

Mrs. Orfirer: If they incorporate they'll never annex?

Mr. Gotherman: There would be no reason to annex. There's no reason for them to ever become part of Columbus and Columbus is a great example because it's sort of regional in itself. If those townships had the power to provide water and sewer systems and provide all of the zoning restrictions of the city of Columbus, they would never have become a part of the city.

Mrs. Orfirer: Now you are telling about powers they don't have.

Mr. Gotherman: Yes, the powers that the general assembly has given them are restricted. They have to submit a zoning ordinance to a vote of the electors. The

city doesn't do that unless the people subject it to referendum. So they are restricted in the exercise of those powers. But they have those powers. And the result of having full powers would be that there would be no reason to join an existing municipality.

Mr. Fry: I don't see anything wrong with giving an alternative form of government.

Mrs. Orfirer: Depending on the alternative form. You wouldn't give them the same alternative form of government that we give counties.

Mr. Gotherman: Basically home rule powers are subject to certain limitations, and we supported that bill.

Mrs. Orfirer: You don't want to set up another division that's going to be in conflict with municipalities.

Mr. Russo: I'm against giving them anything other than what they have now except legislatively.

Mr. Fry: I'd like to give them an alternative form of government. I don't care about additional powers but where you have these townships that have a lot of the same problems, I think they should be able to have an administrator if they want to.

Mr. Russo: We could do that legislatively. I don't think we have to change the Constitution to do that.

Mrs. Orfirer: Then your objective is to give them an alternative structure. Not with more powers but with a different structure. Nothing wrong with that. I suppose if they wanted an administrator, or if they want more than 3 township trustees they could do these things.

Mr. Fry: If a township wants to put a levy on for the purpose of improving their highways in the township, they can do it.

Mr. Kramer: Or police, fire protection, hospitals.

Mr. Fry: I don't see as the objective to get all townships to annex.

Mr. Gotherman: But we would like to not have township structures and powers so that they never do.

Mrs. Orfirer: We're not talking about forcing them to annex. We're saying, don't make them equal to a municipality and still stay a township. What do you think of Gene's suggestion of permitting them to incorporate and charter at the same time so that it will answer their structural and power problems?

Mr. Fry: I don't see any objections to that.

Mr. Kramer: It would be a matter of providing in the section dealing with the adoption of a charter that it could also be submitted to the electors of the township proposed to be incorporated; something to that effect, so that it could take effect when incorporation becomes effective.

Mr. Gotherman: In urban areas you have an adversary relationship between the townships and municipalities. Currently townships are weak, which gives the

municipality some chance of annexation, even though that's highly difficult.

Mrs. Orfirer: We've heard lots of things that we don't cover constitutionally but you have to have some basic idea of what all of the problems are whether you solve them constitutionally or not. Are there other kinds of constitutional solutions that you would like Gene to begin to work on or to thing about or for us to think about?

Mr. Fry: I think we either ought to say that the township form of government is a viable form of government and has application in certain parts of the state or take the other attitude that we should eliminate townships. What happens if we don't have townships? Can we get along without them?

Mr. Russo: I think if we just allow a natural attrition concept with the annexation and the right to incorporate, that the problem might just go away in a period of time.

Mrs. Orfirer: I don't think that politically you are going to be able to eliminate townships. Nor do I think it's necessary. A lot of people would be for it but a lot of people would be against it. I don't think any of us feel, do you, that we have any need to eliminate or think about eliminating rural townships? I don't think that's a problem at all. How do we want to provide basically for urban townships to solve their problem?

Mr. Celeste: I think the answer's pretty clear. I don't think anyone around the table has said given them that power. The only suggestion is to allow them if they want to to organize themselves. Allow that option. They can attack problems differently but that's not increasing their power at all.

Mr. Fry: One thing that concerns me is that we've talked about a lot of things that really don't deal with general principles. The municipalities are not anxious to see the townships encouraged to the point where they resist annexation. And it may well be that the finest service we could do as a subcommittee of the Constitutional Revision Commission is give the people of the state a chance to say how many levels of government they want.

Mr. Russo: They don't even have any concept of what levels of government there are in the state at the present time.

Mr. Gotherman: But the question is like the pre-emption doctrine issue. Do you ask them to abolish townships or do you ask them to give them more power? And you might get an affirmative result that you don't expect.

Mr. Kramer: Looking at the present Constitution and the present provision, Article X, section 2 is really a very curious provision, and as part of constitutional revision you may want to look very closely at that, and see to the extent that it's going to be a constitutional revision dealing with townships, whether this should be reworded, not necessarily from the standpoint of making any change in the law but at least providing something that seems to make a little more sense than this does. It now says that the general assembly shall provide by law for the election of such township officers as may be necessary. The trustees of the township shall have such powers of local taxation as may be prescribed by law. No money shall be drawn from any township treasury except by authority of law. The first part seems to create some implication about having appointive township officers if you want to make any change in the form of government - specifies, in

effect, that there shall be trustees of townships, rather than some other form of government. Why is this provision, "no money shall be drawn from any township treasury except by authority of law" in there? It seems an awfully curious provision generally, that the general assembly can provide the conditions under which money can be drawn from the township treasury is part of the general power to provide for the government of the townships.

Mr. Fry: I had a county engineer in the southern part of the state somewhere that gave me a list of private driveways that were paved by township trustees.

Mr. Kramer: Should I make an attempt at redrafting a general provision? It says that the general assembly shall provide by general law for the election of such township officers as may be necessary. Is that really satisfactory? Should there not be a more general provision as to the power of the general assembly to provide for the government of townships?

Mr. Celeste: I think the main question is whether or not there should be townships.

Mr. Russo: This very fact that this is in there right now provides for townships.

Mr. Gotherman: But it doesn't require them. And it seems that the general assembly could legally not have townships.

Mr. Kramer: Some writers have noted the fact that townships and counties both pre-dated the organization of the state of Ohio and pre-dated the Constitution. The townships and counties were provided for in the Northwest Ordinance. There seems to be no doubt that the general assembly can do what it's done to provide the conditions under which townships change or the township is abolished where it becomes co-terminous or co-territorial with the municipality. I think you raise a constitutional question if the general assembly attempted by statute to say that all townships are hereby abolished, and I don't know how it would come out. I suspect it might well be that the Supreme Court would say that the general assembly does have that power but I think there is a real constitutional question.

Mr. Fry: Don't we have two types of townships. We have the type of townships that we referred to - we mentioned Boardman up in Mahoning County, Delhi down in Hamilton County - where they really have responsibilities - they are the local government in that area and they have big responsibilities. Then we've got a lot of townships in the state whose responsibilities fall on the county. In many cases they've said to the county engineer, "We know we're supposed to take care of the township roads, but we'll give you a percentage of what we're getting and you take care of them." Where, if we didn't have township government, it really wouldn't make that much difference. Isn't there a possibility that if we said that townships, where it was necessary, would be akin to municipalities, which would take care of Boardman and some of these other areas. But then in those other areas we would eliminate a level of government.

Mr. Russo: They can do that if they become a municipality.

Mr. Fry: In Clark County, you have about 10 townships where the work of those townships could be assumed by the county and no one would even know that we no longer had township trustees except that there would be fewer names on the ballot. Because other than maintaining roads, I think that's the extent of their responsibility.

Mr. Russo: We're going on a philosophical issue. The real issue of the township is the identity of the township's city hall with the people who live in the township. That's the great thrust. The real crux of the matter is not what they can or can't do. The people who live in that township, and who have a great argument made for this kind of a thing, is of the identity. They don't want to lose identity, so that's the reason they want a township.

Mr. Fry: It would be a healthy thing to have these people say: alright, we had the opportunity to vote on it and we want to have our township. I would guess that 90% of the voters in most of the counties couldn't tell you who their township trustees are.

Mr. Celeste: There is a coalition that has never jelled on township issues. That's not to get into the area of whether you ought to get rid of them or not, but there are a lot of people in this state, a lot of special interest groups, that really think townships are necessary. What seems to be happening in the last 5 years is that a few vocal township trustees are getting a lot of play, writing a lot of letters. Why not mandate that the general assembly put on the ballot the issue of whether or not township government shall be continued?

Mr. Fry: That's exactly what I'm saying. I'm not saying that I want to eliminate it, but I think it's certainly something that the people could vote on.

Mrs. Orfirer: Would you have a statewide vote about whether townships should be abolished?

Mr. Gotherman: A constitutionally mandated referendum on whether townships are to continue.

Mrs. Orfirer: I don't think the people in the state know about townships - they don't even know what their county government is.

Mr. Gotherman: I think it would be well to try to inform the people about what a county is.

Mr. Fry: Why should the people in Cleveland really determine how local government will be operated in Wayne County or Ashland?

Mrs. Orfirer: I agree. Why would you want a statewide referendum on whether there could be a township down in Hamilton County?

Mr. Fry: Make it an optional thing down at that level if they want to have township government. If Pike County wants to have township government then they can have township government. Let the people in Pike County vote on it.

Mr. Gotherman: I think there is a constitutional question about whether they are required, I think.

Mrs. Orfirer: How do you abolish them? Do the people have some say about whether they continue to have it? Can the people in Delhi township take a vote as to whether they want to dissolve their township or become annexed to whatever, or a form of municipality?

Mr. Kramer: A township can incorporate any time it meets the standards provided for in the incorporation statutes.



Mr. Fry: I think this is the sort of thing that we should certainly raise next week. I haven't changed my position about letting local government make their decisions on this.

Mrs. Orfirer: But a statewide referendum would.

Mr. Fry: Maybe the statewide referendum says that those areas that want to continue township government shall organize and do it within their county.

Mrs. Orfirer: Let's answer some of these questions that were just raised. Is there a means where the people who live within a township can determine whether they want to change their form of government or not?

Mr. Kramer: One means is by incorporation if the township meets certain standards. Or a portion of the township, any area that meets the standards can become incorporated. Number 2, as far as the people in a county determining whether a township can continue to exist, the county charter provides a method of determining that.

Mrs. Orfirer: "...a majority of adult freeholders petition the county commissioners who may grant it". How does a whole township take a vote about whether they want to incorporate or annex?

Mr. Kramer: That territory can be the township.

Mr. Celeste: It would be stated in the petition. You would state in the title of your petition what is the geographical boundaries for which you petition. Presumably, you could do it for a portion of the township as long as you reside in it. Or you could do it for all of the township.

Mrs. Orfirer: All they can do is petition the county commissioners - that does not provide for a referendum.

Mr. Kramer: If a majority of the people say they want to do it, what's the point of having a referendum?

Mrs. Orfirer: Why can't they? Why do they have to leave it up to the county commissioners?

Mr. Gotherman: Because it has an effect broader than the territory which may in fact be incorporated. It could affect the surrounding territory. You have to consider more than the wants and desires of the particular people looking at that area.

Mr. Kramer: The procedure is right here. "Villages may be incorporated as provided in Chapter 707 of the Revised Code. The application is made to the board of county commissioners....The petition shall be signed by a majority of the adult freeholders residing within the territory proposed to be incorporated". And this is contained in addition to a description of the territory proposed to be incorporated, and the county auditor who sets valuation. Those are the important parts. A statement that the area consists of not less than two square miles, with a population of not less than six hundred persons per square mile, and has an assessed valuation of real, personal, and public utility property subject to general property taxation of at least \$2000 per capita. And then there is a proviso for the ski areas, which is something with varying application. Those are the basic criteria and a township may or may not meet those criteria for in-

corporation that the general assembly has established.

Mrs. Orfirer: So it's up to the county commissioners whether they get to incorporate or not.

Mr. Gotherman: If the facts are with the side of incorporation then the commissioners must grant it.

Mr. Kramer: There's a particular provision that the county commissioners must find that the territory included in the proposed municipal corporation is compact and is not unreasonably large, municipal services such as police and fire protection, street construction and maintenance, sanitary and storm sewers, planning, zoning and subdivision control and parks and recreational facilities are capable of being financed by the proposed municipal corporation with a reasonable local tax using the current assessed valuation of property as the basis of calculation, and the general good of the community, including both the proposed municipal corporation and the surrounding areas will be served if the incorporation petition is granted.

Mr. Gotherman: And that really says that both the general good of the community both within the proposed corporation and surrounding areas. Outside of that it's strictly a finding of fact by the county commissioners.

Mr. Fry: Suppose we provided that on a certain election date that the citizens of each county should vote and determine the nature of their government. They decide whether they want township government or not. If we say, on such and such a date you're going to determine what kind of local government you want. You're going to have cities and villages and county government, or if you want township government in addition to this, you designate it. This is off the top of my head, but this would be a great thing for people being made aware of what's going on.

Mr. Russo: I don't think the general public has any understanding of that, whatsoever.

Mr. Fry: If they don't, it would just prove that what you're saying is right.

Mr. Gotherman: This is an alternative way of responding to what the townships say they want, and I guess there are other groups who don't feel they are important in terms of modern day government in different areas who will come to you with suggestions if they have not. But if you are going to consider reacting to what a very limited number, really, a handful of the urban townships want, then, perhaps it is time for other groups to suggest that you think of other questions and decide whether or not they should exist at all. There are a number of groups that have never pushed this, but in response to that perhaps would suggest that as an alternative view rather than simply reacting to what a few township trustees want, and a few hundred thousand people who live in the townships, want.

Mr. Fry: I think it would be a healthy thing to get the people in each county looking at local government and saying this is what we want. If they don't care, then we learn something from that. But in a lot of counties it would force them to look at their government.

Mr. Russo: How about some county alternative forms minus the villages and townships?

Mr. Kramer: Isn't this something that the general assembly could really do now?

Mr. Fry: The General Assembly's not going to give it any attention, Gene.

Mr. Kramer: What you suggested a couple of minutes ago was in effect a mandate that a county charter or what would amount to a county charter must be submitted in each county. A vote shall be taken in each county to determine what forms of local government shall be....

Mr. Celeste: I think you should say whether township government shall continue...

Mr. Russo: Well, you've only got two townships in Cuyahoga County. I mean, what kind of interest can we generate with that?

Mr. Gotherman: The issue is really to test whether the urban townships can get what they want?

Mr. Fry: You can do this by making requirements of each county and let those urban townships where they are do it in their own county. We can tinker with the language in this Constitution, but that was not the reason we created the Constitutional Revision Commission. I really think that there is an opportunity here to look at this question. I think we're giving more options to local government in letting them determine whether they want townships in their county or not. The issue would be, on and after such and such a date each county shall make a determination as to the type of local government.

Mr. Gotherman: One way to do this would be to say, unless affirmed by positive vote of the people of the county, the township shall terminate as of such and such a date.

Mr. Fry: I really feel that we've got a chance to sort of blow some fresh air into this thing and get people with it in the state to make this major determination.

Mrs. Orfirer: We will be meeting Wednesday evening, June 5, at 5:00 at the Neil House.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
June 5, 1974

### Summary

The Local Government Committee met on June 5 at 5 p.m. in the Neil House. Present were chairman Linda Orfirer, Representatives Anthony Russo and Charles Fry; Nolan Carson and Edwin Heminger. Also attending were John Gotherman, Al Strozdas, and Dale Helsel, representing the Ohio Municipal League, and Ann Eriksson and Gene Kramer from the staff.

The Britt case, which denied Columbus the right, under the constitution, to appropriate property outside the city for utility purposes to serve persons outside the city, was discussed first. Mr. Gotherman stated that no response had been obtained from Columbus as to what was planned. He stated that the problem most probably could be handled by statutory enactment since one of the problems is the payment of in lieu taxes, which could be eliminated from the statute. If it is a constitutional problem, it could be undertaken as a special amendment later. No proposal for constitutional change is suggested now.

Mrs. Eriksson reported on a talk with Judge John Duffy, counsel in the case. He feels that the case has broader implications than the mere fact that a municipality cannot constitutionally appropriate property outside of its boundaries to serve only residents outside of the city boundaries. He noted that there is the statutory provision, providing the city pays money in lieu of taxes. The general assembly could amend that to remove the tax payment provision. It's his opinion, however, that the tax payment provision is a good provision. This is part of the whole problem of local tax structure, and there could be school districts that could suffer from the loss of this revenue; not in this particular case so much, because the property being taken for a sewer extension is not that extensive. If the city should decide to bring itself under the statute, it is his opinion that the city would then be saying, in effect, that the municipal utility is now a public utility and, if it makes itself subject to one statutory provision it could have the implication that it was making itself subject to statutes having to do with public utilities. This would be a very radical change for municipal utilities if they were subject to the Public Utilities Commission. They are not at the present time. He doesn't consider that to be such a problem on rates, but he feels that the implications are with respect to service and the possibility that there could then become a ruling that cities would have to extend service to persons who were in a position to be served by the utility.

Mr. Gotherman: That certainly is looking much further than what the case said.

Mrs. Eriksson: Yes, however, that's his interpretation of a possible effect of the city using the statute. He has also discussed with EPA officials and others the implications of this that Dublin may have to build its own sewage treatment plants and he agrees that that is not a desirable result because if Columbus has the capacity you should have other cities using it, that you should not have a proliferation of sewage treatment plants, perhaps under circumstances in which some of them might not be good, some of them might be polluting waters farther down, and so forth. But he feels that the whole problem should be solved on a regional basis and that you should not be just looking to the provision of a regional sewer plant which the city of Columbus could supply, but you should be looking to a total land use policy for the whole of central Ohio which would take into account the total effect of the tax structure and how taking property for a public purpose is

going to affect the various subdivisions in which this property is located. He uses as an example the Delaware reservoir. A reservoir takes a substantial amount of property. This is an example of valuable property being removed from the tax lists of another county, primarily for the benefit of the city of Columbus. He feels that the whole area should be considered. He also was concerned with the taking of some what he says are really good scenic areas along the river that he feels personally that alternate routes could be selected. The whole problem should be solved, not on the basis of the Columbus sewage treatment plants, but looking at the whole of central Ohio.

Mr. Helsel: It seems that you're combining a couple of different problems, aren't you? First of all, if Dublin builds its own sewage treatment plant it goes off the tax duplicate and valuable land is lost to the tax duplicate as a result of their activities.

Mrs. Eriksson: If they build it within their own city limits, then they're affecting their own residents, maybe in several different ways, but at least their residents are benefiting from it. If Dublin builds the line to Columbus, the effect on the tax duplicate is the same. If the municipal utility were subject to the PUCO, the PUCO could require the utility to serve the community. There is no way to require the city of Columbus to serve the residents whose property was being taken in this case.

Mrs. Orfirer: It reminds me of the reversal of the Minneapolis deal where 40% of the new growth of the tax duplicate gets spread around all the municipalities within it. Perhaps large areas that are removed from the tax duplicate, the loss can somehow be spread out over all of the local government areas.

Mrs. Eriksson: The tax problem, as Judge Duffy sees it, is only one of many problems to be solved in any metropolitan area. Another is the best way to make the maximum use of the land for the resident benefit of everyone.

It was agreed that no reason to suggest constitutional change in this matter had appeared from the discussion of the Britt case, and no change would be recommended by the committee unless the circumstances changed.

Mrs. Orfirer: The next question is the initiative and referendum in relation to municipalities.

Mrs. Eriksson: The one thing that the Elections and Suffrage Committee recommended was trying to make local issues clearer on the ballot. No specific recommendation as to how this could be accomplished.

Mrs. Orfirer: What they were talking about was the voting no when you mean yes. This is true on the state level. Of course, I hope it will be solved with the ballot board. Perhaps they were thinking about having a municipal ballot board.

Mr. Gotherman: The initiative and referendum, as applied to municipalities, is different from the problems the state has. I haven't viewed enough charters to be able to say how different they are, but there is a provision in the charters which do provide powers to make it more difficult, or require more signatures or less, or to go into the state regulations, which I think is probably what most charters do, and I have been involved with a number of them. They're not cumbersome. It isn't terribly difficult to get a referendum on the ballot, nor is there a proliferation of them. I don't see, either, a cry on the part of the public that

we want to decide more of these things.

Mrs. Eriksson: In other words, your thought would be that the present provision in the Constitution is perfectly adequate?

Mr. Gotherman: Yes.

Mrs. Eriksson: It would seem to me that the most basic question would be whether any charter cities have had charter initiative and referendum provisions upset on the theory that they differed so radically from the provisions in the Constitution for the state, that the courts held that they hadn't really provided for initiative and referendum. I don't know of any such cases.

Mr. Gotherman: There was a recall case that settled one on the grounds but it probably was a poor decision and I think it was a court of appeals decision. It held the statute of recall was unconstitutional. And then there was a later charter case which held that a charter provision providing recall was constitutional. One case upheld the right of a charter to prohibit initiative as to tax measures or as to appropriations measures or as to certain kinds of measures which people felt should be in the hands of the councils. If they didn't like what they did in the councils it should be defeated in the election. It happened in a very few cases, really, I think on the constitutional issue. And there are a number of charters that provide considerably different kinds of procedures than we find in the statutes. You find some charters which take the referendum back to the council and give them the opportunity to act. If they don't, or if they amend it and change it, they give the people who initiated the petition the right to again circulate the petitions if they want the revised ordinance to be voted on. So the charter provision has provided some innovations and some flexibility locally. Columbus, for example, and some of the other cities allow referendum on emergency ordinances and it seems to work very well, even though most do not, in the statutes do not allow it on emergency. As long as the charter provides for something that can reasonably fall into the right to initiative and referendum, and that preserves the voters' rights and is not a sham, I don't see that there is any problem in the courts upholding it.

Mr. Helsel: I think our only concern would be technical concerns that in the process of separating constitutional provisions, because now they are currently housed together. We wouldn't want to lose the benefit of the case law that we have that does make a reference to one of the other sections of the Constitution.

Mrs. Eriksson: That could be done in the wording of it. Do you want to keep this section with the other sections or do you want to put it into Article XVIII? And this might be appropriate to discuss whether you want to extend it to any others than municipalities. The right now only applies to municipalities. It's not anything that's given to residents of counties and townships.

Mr. Gotherman: Perhaps we might be able to codify more clearly in Article XVIII what the rules are which at times do raise the question like the Oxford case. I suppose there would be no problem in moving to Article XVIII.

Mr. Kramer: This could be rewritten and put into Article XVIII. In attempting not to make any change in existing law, I think rewriting it to make sure that happens would require a longer provision, though. When you separate it from the initiative and referendum in Article II, the terms really don't have much meaning except by reference to the state provisions, and you have to spell it out a little



more or make reference back. And it might not be a bad idea at all to have some reference to charters specifically. If it isn't there then it's really by interpretation that we know that the charter provisions are valid even though they do conflict - are different from the statutory provisions. As far as the other local governments are concerned, initiative and referendum were not provided for as to them at the time it was to state and municipalities, because they do not have legislative bodies. As to the permissive county taxes, there is a referendum procedure provided for by statute, and for township zoning. The general assembly has power to provide for it.

Mrs. Eriksson: The county charter provisions have some references also as to referendum.

Mr. Kramer: And the section as to the transfer of authority and powers from townships - in Article X, section 1. This has never been implemented by legislation. There are contractual arrangements.

Mrs. Orfirer: Now, how does this situation change if our new provisions for strengthening the county's powers come into effect?

Mrs. Eriksson: We have nothing in our powers section which refers to referendum.

Mrs. Orfirer: Do we now need to do something along those lines if we do have a change coming about in the structure so that there is a county legislative body or if we do finally get county charter government and they do have a legislative body?

Mr. Carson: If counties have ordinance making power, it seems the people should have the initiative and referendum powers.

Mrs. Orfirer: We've given them the power. We haven't mandated a change in structure, but I presume it will come.

Mr. Helsel: One other thing that comes up is the use of the ballot for straw votes. You don't have this in Ohio and I don't know where it comes from. Using the initiative to find out the will of the people: shall we build a city hall on block 'a' rather than block 'b'.

Mrs. Orfirer: Or a referendum on the Vietnam war.

Mrs. Eriksson: The Supreme Court has held in the case of municipalities in Ohio that you can't put any general question on the ballot. You can only put a specific ordinance on the ballot. The question "shall we get out of the Vietnam war", in some cities in other states was put on the ballot. But I don't think you could do that in Ohio. Because the section specifically says "now or hereafter authorized by law to control by legislative action", so it has to be by an ordinance which is how the municipal legislative body acts.

Mr. Kramer: I think those cases are confined to statutory cities. I'm not sure charter municipalities couldn't provide in their charters for a straw vote.

Mr. Gotherman: The only question would be whether that expenditure for that election would be a valid public purpose. That could change as the times change and as the view of the people in the courts change which is perhaps not a bad way to have it interpreted.

Mr. Kramer: There would have to be some question of general public interest.

Mrs. Orfirer: Let's resolve this question of the first half of the problem which is whether we should be extending the initiative and referendum provisions to counties. The argument seems to me to be going along the lines that if it's available to municipalities, and counties are going to have the same powers or similar powers, then we ought to provide for it for them too. Are there any thoughts otherwise?

Mr. Carson: That's been traditional in Ohio. I think we should.

Mrs. Eriksson: You'd want to tie it in to the county powers section?

Mr. Carson: Could we write a section just incorporating the municipal section into the county one or revise the municipal one to include both counties and cities?

Mrs. Orfirer: My thought, at this point, is that since we have agreed that there would be considerable difficulty involved in moving the initiative and referendum section over to Article XVIII, anyway, why don't we leave it where it is, or wherever they're going to put it in a separate article - leave it with the rest of the initiative and referendum procedures and expand it to counties as well as municipalities. Otherwise, it seems to me, you really need it in three places.

Mrs. Eriksson: If the county powers section is not adopted, I don't know just what it would mean to have counties in here because the counties don't have any general ordinance making powers now. Perhaps we should have a separate section and add it to the county proposal. Then it could go on the ballot as one issue.

Mr. Carson: But not the amendment to this one, you don't think, together with the county powers section?

Mrs. Eriksson: If you're not making any other change in this section substantively, other than moving it someplace, then it might very well be that you could do that. Put this on as a separate issue.

Mrs. Orfirer: How does putting it on as a separate issue tie it to the county powers?

Mrs. Eriksson: No, I mean put it on with the county powers section.

Mr. Carson: You'd have one issue including both sections, implied powers and this amended municipal provision incorporating the initiative.

Mrs. Eriksson: If you're not making any other change in the section, then there's really no other question other than transferring it. Now, if you're going to make any other substantive changes in the section, then I think there might be a question as to whether you could tie it in with the county powers.

Mrs. Orfirer: What if the county powers thing goes down? What happens to this?

Mrs. Eriksson: Then you would have to put this on again, I think, at a later time. You'd just end up with section 1f sitting in Article II, which wouldn't be a disaster.

Mrs. Orfirer: No, it wouldn't be a disaster, but it's not very good either.

Mr. Kramer: Otherwise, you have to have a provision in Article X as to counties on initiative and referendum, and then this section in Article XVIII so you'd have one on counties and one on municipalities. They would probably be very much parallel but just two different articles.

Mrs. Orfirer: Well, why don't we leave it to you to thrash out where it belongs and how it's going to go on the ballot, and to tell you just that our position is that we would like to have it apply to counties, and let you take it from there. Are there any other changes that you want to make while we're on it?

Mr. Kramer: The only other possibility for change in the language having to do with the initiative and referendum would be a reference to charters. And there we'd have something of a problem because the charter section already provides that the initiative and referendum shall be guaranteed to the people of the county in connection with the charter. The municipal charter sections don't say that. So if you were going to have one section dealing with both counties and municipalities, you'd either make any language relating to charters applicable to municipalities only, or you'd just have a redundancy and provide both in this section and in section 3 that the county charter must provide for initiative and referendum. As of now, there's no compelling reason why you'd have to provide anything in this section as to charter procedures governing the initiative and referendum, but I think the language probably would admit of a decision that would require municipalities to use statutory procedure. Do you agree with that, John?

Mr. Gotherman: Yes. I think there is some question. That's one of the questions that have been litigated and the litigation has been in favor of the holding of the charter provisions on the initiative and referendum. It is subject to continuing inquiry by case law. If by putting the municipal initiative and referendum procedures in Article XVIII, you could perhaps clarify at least that point. And if you have the county provisions in the county article, it does add a few more words to the constitution, but it would be somewhat easier if in the future, and if someone wants to change the procedure between the municipal section and the county section that it would be somewhat easier for them to do that.

Mr. Kramer: There may be different questions for counties and municipalities. On a whole, I would think that it probably is preferable to have a section relating to the county initiative and referendum and a separate one relating to the municipalities.

Mr. Carson: I don't understand why there's any need to have two.

Mr. Kramer: If you're going to combine them into one section, it probably should be in neither Article X nor Article XVIII.

Mr. Carson: Why can't it stay in II where it is?

Mrs. Orfirer: Because the other committee is recommending moving all of the initiative and referendum sections to a separate Article.

Mr. Kramer: And if you were going to make any change in the existing language of if other than just adding counties to it, if you were going to add counties to it and also add something about the charter provision, then it probably becomes a question by itself that you couldn't combine with the county powers section. And

you wouldn't want that to pass without the county powers section passing, because then the initiative and referendum would be applicable to all county actions to which it's not now applicable. We would just reflect the existing law that if the charter provides for the initiative and referendum, those provision prevail rather than the statutory provisions.

It was agreed that drafts would be prepared.

Mrs. Orfirer: That brings us to the townships and I regret that we do not have any of the township people here as we had planned. Mr. Hummel planned to come but he regrets that he could not be here. He made an earlier statement to us which Ann has sent out. I wanted us to have the opportunity to ask very specific questions. Nolan, I know both you and Ed live in townships and I don't know how involved you've been with the governmental procedures or lack thereof, but maybe you can comment. What things are not being taken care of in the way that they would wish because of some lack in township powers?

Mr. Carson: I have been counsel for the township I have lived in for a brief period of time and did it without compensation, so I didn't make a career out of it. But I find examples of problems we ran into where powers were insufficient. I really don't want to be in a position of representing the townships because I'm not an expert on the subject. I live in a very urbanized township. The people who live there like it. They do not want to be a part of the city of Cincinnati. They do not want to be a part of the village of Newtown which is actually in the township. They might wish to incorporate. I don't know. But they do want to progress and they are willing to be taxed. I don't know whether giving trustees more powers is the answer, or making it easier to incorporate, or some other vehicle. I'm just saying that there's a problem in the urban highly dense townships that I think this commission ought to recognize.

Mrs. Orfirer: Is the problem one of the structure of government, that there is not a large enough body with just the three township trustees?

Mr. Carson: I think it's the lack of powers or the seeming lack of powers - I really can't tick them off. I can give you one example that I ran into. There are so many things for which they have to go down and bang on the county commissioners' desks to get the county commissioners to do things for them. There's a total progression down to the county courthouse to get things done out in the township. It seems to me that shouldn't be. They should be able, with the number of people that live out there, to tax their citizens and have powers to do things themselves without having to have the county commissioners or the county engineer do it. One experience I recall was that there was a township street in a subdivision with a dip in it and everytime it rained that dip in the street would be filled with water. And the rain water would inundate the yards of the people on both sides of the street. Three or four families on each side were affected by this. There was a natural run-off creek where the water could be drained, but in order to do so, it was necessary to get about a three foot easement, a right-of-way. A lady that owned some property behind the residents, and it turned out that the township didn't have the power of eminent domain. She wouldn't sell it, they tried to buy it from her, and so they had to go to the county and the county had to institute proceedings, which just seems wrong. It took a year and a half to get it done and finally the county did it and they were able to get rid of the water.

Mr. Helsel: Is that problem really the lack of power or is it the ineptness on the part of the county officials in responding to the problem? The township people

are the constituents of the county officials. The problems could probably have been handled in much less time, had there been a disposition on the part of the county officials to do so. You're assuming that township officials would have acted more expeditiously.

Mr. Carson: I wasn't using the year and a half to say....I think it probably would have taken that long anyway. But you first had to go to the county engineer and he had to draw the drawing, and they've got other problems of their own. They're worried about the county highways much more than the township roads and streets.

Mr. Helsel: What I'm trying to suggest is that the county officials really should be there to represent the township. After all, who else are their constituents?

Mr. Carson: There are lots of constituents including those in the cities and villages. That's the problem. They've got lots to do and not just handle township road problems and drainage problems.

Mr. Russo: This is not a constitutional issue. I think that would be a legislative matter to delegate some powers to the townships.

Mrs. Orfirer: This is something that we have to decide.

Mr. Russo: I would say that it could easily be handled with legislative powers much more so than by the constitution.

Mrs. Orfirer: This specific kind of thing, perhaps, but there may be others.

Mrs. Eriksson: Mr. Hummel agrees that townships should be given the same powers in the constitution that we're proposing to give the counties. This is essentially what he's saying: that it should be a constitutional delegation.

Mr. Russo: If we're going to do it by constitution, we in essence are taking the positive attitude and protecting the townships and thereby making the dissolution of townships much more difficult, because we're writing into the constitution and maybe offsetting the concept of county form of government. If we do it in the legislative halls, we can always abolish the concept immediately by repealing the law. Repealing a section of the constitution would be much more difficult.

Mr. Strozdas: It's a very significant point really. It get's down to the issue of how much you want to proliferate additional units of government or is the objective to do away with those that are unnecessary?

Mr. Russo: I don't know what the rest of the committee feels, but my argument would be to, by attrition, do away with them, if they don't want to incorporate.

Mr. Kramer: Any unit of government which is created by statute or derives all its powers from the legislature is basically in the situation where the powers that can be exercised are only those which are specifically granted or which necessarily flow from those that are specifically granted, so that just as counties now and school districts and all other districts have to go to the legislature when they run up against a problem or they can't find statutory authority, and townships also have to do that. I think the real question is whether townships should be another general unit of government. The only general unit of government that's provided for in our Constitution is the municipal corporation. The committee and the commission now have already proposed that in effect counties be made a

general unit of government in that they would have limited legislative power. The question you're facing is, should townships be another form of a general unit of government which would have powers which they would derive directly from the constitution or through legislation?

Mr. Strozdas: If county government were modernized, I think it would eliminate the kind of problem that you're talking about because I think the counties would be prepared to provide more and better service and would be better staffed - would have the ability perhaps to tax and to provide services that they're not now able to provide. I would be a little scared to provide in our county eight more units of general government. There's lots of contention now, and if you're going to step along the county lines, be prepared that the cannons may be pointed in your direction. All of it gets pretty ridiculous, really, but is even worse if you create a lot of little fiefdoms.

Mr. Carson: What county are you from?

Mr. Strozdas: Clark.

Mr. Carson: Are those urban townships?

Mr. Strozdas: A couple of them are. One of them is perhaps 14,000 and another one 8 or 10,000, so in our context they're urban. But in many respects their power or their influence is already too great. I can cite you a very precise example of what happened in Clark county. We were being considered as one of three cities for an experimental program - it was a housing program. Apparently the federal government has recognized that present housing programs haven't worked and they want to experiment in three different communities on a voucher system. Without going into the details of the thing, one of the requirements was that the entire housing market area, the units of government in the entire housing market area accept the program. Because the experiment couldn't work if half the people in the housing market area didn't accept it. The entire county didn't have to accept it, but the city of Springfield did, the county government had to and the three urban townships surrounding us. This program would have meant 40 to 80 million dollars in the towns outside of Springfield over a ten year period - the equivalent of an industry employing 700 people. The city approved of the program, the county approved of the program, two townships approved of the program, but the third township had one trustee for the program, two township trustees against, and the feds refused to give us the program because one township trustee, representing an insignificant part of the housing market was able to thwart a program for 100,000 people. And I think that's power that's way beyond what these two individuals ought to have had.

Mr. Carson: Maybe the feds were wrong in the regulation.

Mr. Strozdas: Maybe so. I think the feds were wrong in a lot of the regulations, but these are things we have to contend with and they come from afar. And yet you see these people in this township are dependent upon Springfield for their livelihood. In the main, their jobs are in Springfield, their associations are in Springfield, they wouldn't be living in the township if it weren't for Springfield. So they accept all of the benefits of an urban area and none of the responsibilities.

Mr. Carson: I live in a township and I happen to pay a lot of tax to the city of Cincinnati in the way of a very stiff earnings tax which I pay and my firm pays



taxes. We pay a very stiff rent which goes into paying taxes. I'm also a lawyer there - I think I assume some of the obligations of the core city where I live, but I choose to live out where the trees are, so I really don't think you can say it's all a one way street.

Mr. Strozdas: Perhaps not an all one way street. Certainly some of our best citizens who are supporters of municipal government live around the periphery of the city.

Mrs. Orfirer: I think, if I may say so, that we're getting a little bit far afield here from what is a constitutional problem.

Mr. Strozdas: It is, except that if we're talking about powers, what I'm suggesting is that as a resident of a city, I'm fearful of additional powers being granted to township officials, when I don't think, frankly, that they're capable of handling the powers they've got now. This is a generalization, of course. There are those who can.

Mr. Heminger: I might just add for perspective that I happen to come from a rural township in a rural county, and I think, numerically, we probably represent the great bulk of the townships. I receive very little service from the township, and I'd say it is the opposite of the situation that Nolan comes from. I don't know of a single thing that we receive that couldn't better be provided by the county. It does tend to represent the other end of the spectrum a little bit, I think.

Mrs. Orfirer: Apparently there is no great problem existing for rural townships, so it's very easy to say to just leave them alone because they're not having any problem like the urban ones are. On the other hand, we get your point of view which is that there is no reason why they really have to be there because the county takes care of it.

Mr. Heminger: Particularly if we move in the direction we're talking about, strengthening county government.

An outline of township powers was distributed.

Mr. Kramer: The reason that this outline of the powers of the townships was prepared was so that everybody could get a better idea of all the things that townships are capable of doing under existing law. It really began, of course, as a special unit of government - a really limited unit of government dealing mainly with roads. From time to time a few other things were added like the authority to quarantine places where infectious diseases were rampant and that sort of thing. As the years have gone on, however, the general assembly has added a large number of significant powers to townships so that if you look over the list, townships that would make use of all of the powers that are listed on these three pages would have a very large percentage of the power that a municipality can exercise with the exception of the utility powers. And the way that the statutes have provided for this, it's largely a matter of the townships choosing to exercise these powers so that rural townships make use of very few of the powers whereas so-called urban townships may make use of a large number of them, including setting up full-fledged fire departments, police departments, and you could drive through some of the larger, more populous townships, and from looking at the services that are provided and the public buildings that you'll see, you couldn't distinguish that territory from a municipality, so that, in effect, the townships can become very much like a municipality today in powers exercised, except for their form of government and except for the municipal utility powers.

Eminent domain is not provided generally - it's provided with respect to particular powers. The end result in many townships is not that much different from the result you would have if you were living in a municipal corporation. There's no power to levy the municipal income tax, which also is a basic difference. There is a large number of provisions for voted tax levies - that has been the main source of the townships for their local purposes. For their roads, they get large amounts of money from the state. In order to get a charter, an area first has to incorporate, and when it incorporates, it takes on the village form of government, and to move from that, either to a city form, if you have the 5,000 population, or go through the process of charter adoption.

Mr. Heminger: I suppose the 3-mile limit would tend to discourage them from becoming a corporation.

Mr. Carson: If you incorporate as a municipal corporation, you could then adopt a charter. I'd like to have somebody explain the three mile provision to me - why that's in and is still needed.

Mrs. Orfirer: It's there to avoid the kind of thing that's happened in Cuyahoga County where everytime you move two steps out of the city of Cleveland, you're in another municipal corporation. There's no room for any annexation or merger in Cuyahoga county at all. This causes great public relations problems in government, great wastefulness, and uneconomic and ineffective kind of operation.

Mr. Gotherman: Speaking from the standpoint of those who helped pass that provision, it also provides a sort of buffer zone or cooling off period because annexation issues become quite emotional. Most cities, whether they're large or small, feel that they should have some future to expand reasonably by annexation. In the Cincinnati area, particularly, a number of years ago it was true, as soon as people wanted municipal services and annexation petitions were filed, the people who did not want annexation started circulating corporation proceedings which is another method by which you can provide municipal services other than annexation. So many people who wanted to be within a municipality were divided. If you divide the proponents for having municipal services between those who want annexation to Cincinnati or some other suburban community and those who want to establish a new community, you maintain the status quo which happened quite successfully in a number of areas. And the corporation law was used, quite frankly, by the township fire departments who had their own reasons for not wanting annexation, as a weapon against annexation. It was also provided to prevent a proliferation of new municipalities in the urban areas, hoping that eventually consolidation would occur, as opposed to having a lot of new communities. But it did have the other feature. And it started off not as a straight prohibition but as a delaying kind of thing. You couldn't incorporate within 3 miles for, I think, 30 to 60 or 90 days - so many months, and then after that time, the municipality would have the ability to annex and theoretically you could get both issues before the people. It was eventually established as a prohibition, taking the 3 miles as a necessary growth area which should be preserved unless the municipality wants and consents to the incorporation, and admits they don't want the area, or unless they've rejected annexation of the area within 2 years.

Mrs. Orfirer: One of the complaints we hear frequently is that if the townships were to incorporate, they would have to take on a lot that they weren't ready to take on, and didn't feel it was necessary to take on. And the cure for that, in our mind, was that you can adopt a charter and not have to go through this business of changing their form of government. So this was the reason for this draft that

you have. Have you all had a chance to look at it? If not, do you want to do so now for a moment?

Mr. Fry: I suggested that we pick a specific day and give each county the opportunity to vote on whether or not you want to have township government and commission government. I think this is a good way to focus the attention of the voters on the problems of local government. In some counties, they won't do anything with it. But, you know, we could put a lot of these things in the constitution and nothing will happen. They'll just say we want to go on just the way it is.

Mr. Carson: Set up a local option for townships?

Mr. Fry: Yes, and establish the fact that they've got to settle on what they want.

Mrs. Orfirer: Was your suggestion that there be a mandatory referendum at which the townships would decide whether they wanted to incorporate?

Mr. Fry: No, not township incorporation. I want to go to the bigger problem of what kind of government we are going to have in the counties, and give the voters of each county the opportunity to say, yes, we want to continue with township government; we want to give the county commission the opportunity to restructure itself or be restructured; and force some decisions that we've found out from history that aren't going to come out by initiative. If we wait for the citizens to organize and do it we run out of steam and nothing happens. I think that if we did it statewide, in every county at the same time, people would be interested in it.

Mr. Russo: You could do that by state law couldn't you, Charlie?

Mr. Fry: I think we should mandate it in the Constitution.

Mrs. Eriksson: Would the question be "shall a county charter be adopted" or "shall a county charter commission be elected"?

Mr. Fry: I'd rather deal with the alternatives on the type of government and not go through the charter part of it. We would say that on such and such a date the question shall be submitted to the voters of the state as it applies to their particular counties. The first question would be to continue with township government. Secondly, do you give the commission the opportunity to select the commission manager or something comparable to a city manager? Some of these things we've had recommended in a study of local government and some of the things we've talked about.

Mrs. Eriksson: In other words, you'd put some alternates for county government on at the same time, is that what you would do?

Mr. Fry: Not all at the same time but depending on what happens on the first question.

Mr. Russo: Do you have to adopt a constitutional amendment first that you can make this kind of approach, is that correct? Then the next move is that anyone who is a resident of a county going to vote on determining whether townships shall exist in the county. Mr. Russo noted that many details would have to be worked out.

Mr. Carson: I wonder if it would be possible that if the constitution had a provision which required a mandatory vote in each county of the state to be counted separately - local option - in a series of years. Let's say that in November fol-

lowing the adoption of a constitutional amendment the first vote would be on whether a county charter commission shall be appointed (or whatever you do to see if they want a county charter in that county). That would force the issue in those counties.

Mr. Russo: You could force that issue immediately, couldn't you?

Mr. Carson: But nobody's doing it.

Mr. Fry: So we don't have to wait for local initiative to put the questions on.

Mr. Carson: If this is done statewide at the same time, there could be a great deal more talk about it in the press and you might get a better airing than you would otherwise.

Mr. Kramer: If that were done, it could render the issue of township government moot.

Mr. Carson: Then the constitution would say that in those counties where the proposition fails, the following year a proposition would be put on the ballot in that same county with respect to whether some change in townships should be effected to give them additional powers or made more amenable to progress. In other words, if the county charter route was successful then you have the problem solved. If it didn't pass in the county, you've still got the same problem. And honestly, all I'm saying is that in my county annexation has been a dead horse for fifteen years. Nothing has happened, the city of Cincinnati has stayed right where it is and it will stay right where it is. The county charter issue is dead. A lot of us think that that's the solution, but right now nobody's doing anything and it's not working. And a lot of people live in areas where they don't have the powers. The services aren't there. So there's a problem, and even though we say that this may take away some of the rights of municipalities to annex townships or to consolidate government, it's not happening in my county, and it hasn't happened for a number of years. I think the local option has to be preserved here, and whatever we do in Hamilton County shouldn't affect Clark County.

Mr. Gotherman: It would seem to me that if there were a constitutional provision that forced the issue periodically on the county government, it would really render the other issue moot whether or not it was approved, because you can now legislatively grant whatever powers you want to to townships.

Mr. Carson: But they haven't.

Mr. Gotherman: If you can't get it done legislatively, it's going to be a lot harder to get it done constitutionally.

Mr. Fry: I think where we stand right now is the legislature's not inclined to do it and the townships aren't requesting it, and in a particular county you'll have some people stirred up who will say they can get along without townships.

Mr. Kramer: Historically, charters have been proposed only in a handful of counties out of the 88. And realistically, it's only in the larger counties where there have been or are likely to be any real sentiment for county charter form of government. It's probably an exercise in futility as to at least three-fourths of the counties to put that question to the people.

Mr. Fry: I think the question would have activity in Springfield.

Mrs. Orfirer: I do think that it needs to apply only to a limited number of areas where there is a problem. And I think that if your recommended county measures get passed, it is going to make it so much easier to get a county charter that you're going to see some action there without having to put it on the ballot statewide for people to take a vote on.

Mr. Helsel: In those counties that have gotten a charter or have voted on it, it's not been a problem getting a charter commission to best of mind, that which I think is significant that the people say, "something's not working". It seems to me it's been very easy to get a charter commission, at least in Lake County which I'm familiar with. Of course, the charter went down because of the fears of taxation and everything else began to get raised and all the other items. But it begins to show that people are thinking about this. Now, if it were a periodic review, it would be helpful, since I doubt they're going to try it in another ten years.

Mr. Carson: By constitution?

Mr. Helsel: However you can do it. Townships can be just as different as municipalities. We've heard of two townships here - one that's completely rural and one that has trees, but there are townships that don't have trees and have 30 foot lots. This type of township exists also, adjacent to municipalities, and they like it where they live with septic tanks on 30 and 40 foot lots.

Mrs. Eriksson: The first question that you mentioned submitting was: do we want to have township government in this county. Nolan suggested the first question should be: shall we call a charter commission? I think these are two different ideas.

Mr. Carson: Let's say that the constitution mandates the first issue would go on the ballot in November following the adoption, which would be: shall a charter commission for the county be elected? And if the answer in a county is yes, then the charter commission is elected and they follow the provisions in the constitution. Is that right? For framing their charter?

Mrs. Eriksson: Yes, the charter commission is elected and then the charter is submitted.

Mr. Carson: The charter is submitted by law to the voters. I wonder if this second constitutionally mandated vote would be that if in a county the first vote is no against a charter commission then you have to go back to the voter with issue number 2. Or if after 3 years, say, if they initially vote to elect a commission, but within 3 years or some period of time, a charter isn't adopted, then in those counties you would go back to the voters with issue number 2. And issue number 2 is an issue which would do something about these urban unincorporated areas.

Mrs. Eriksson: Nolan, you're assuming then that if the answer on issue number 1 is yes, and that a charter commission is elected and a charter adopted that problems in the urban townships will be subsumed in whatever kind of charter.

Mr. Carson: I assume so. But at least the county has attacked the problem and they have come up with a solution, in other words, they've voted on a solution. And I wonder if the constitution should go any farther than that in the county.

Mr. Russo: What happens if they turn down the charter? Are you going to mandate another election?

Mr. Carson: Then you mandate another election. I'm not sure what the issue is.

Mr. Russo: I just want to point out that to me that the significance of what you're saying has not really penetrated to a lot of us because we're practically coming to the kind of a governmental concept that says we're telling you what to do and when to do it. I can't buy that kind of a theory because it's the next step to fascism or communism. You're telling them practically, "now we're going to make you vote until you eat this."

Mr. Carson: First of all, we're going to the voters and saying: now here's a constitutional amendment which provides these things. Vote yes or no first of all on the amendment that would set up this mandated vote. I'm not talking about a periodic vote. I'm talking about for the first time in this state having all of the counties decide. They're all changed in character from what they were when they were created.

Mr. Russo: I would even go so far as to say mandate the change without a vote of the people.

Mrs. Orfirer: What would your reaction be to just simply providing in the constitution that the general assembly shall provide for a referendum on forms of government? I don't like spelling it out in the constitution the vote on charter commission and whether you want townships, vote on this, and spelling out how many years apart.

Mr. Fry: The general assembly won't do anything.

Mr. Carson: If mandated, there would be a thorough airing of the issues statewide which I think would be beneficial.

Mr. Strozdas: The interest of cities here is affected. The rural townships which are self-contained and the people who live there probably farm or work or have all of their contacts or associations within that townships, these things really don't affect cities too much. But the other kind of township, the kind Mr. Carson was talking about is not self-contained. They're interdependent. The city and the township have too much in common for the township to be too independent, from our point of view, of the problems of the urban area. I think the problems we have are that the people who live in the township, it's an enclave that really retreats from the problems that they're a part of. And this bothers us. Somehow, you've got to remain a part of the problems that you're a part of. I am generalizing, but for those of us in city government this is a real problem.

Mr. Carson: I don't live in the village of Indian Hills, but the whole city of Cincinnati is economically and morally run out of the village of Indian Hills.

Mr. Strozdas: We can't isolate ourselves and I think this is what some urban townships would like to do.

Mr. Carson: I'm trying to recognize practicalities and the practicalities of my county is that the city of Cincinnati is not going to expand. They don't want to, the city doesn't want to and the people outside don't want to go in the city.



Mr. Fry: Then in the county the township government is going to be the government.

Mr. Carson: Yes, sir. And the solution to this problem in my county is an effective county government and an effective city government working together.

Mrs. Orfirer: Do you think that their basic desire is to retain their identity?

Mr. Carson: Yes. It's very much so. I don't think they necessarily want to remain a township. They don't want to be annexed to the city of Cincinnati.

Mrs. Orfirer: So they want to be a separate entity and maintain their roots as a community and their involvement as their own community as it now exists. You don't think they would be particularly opposed, then, to incorporating as long as they retain their separate identity.

Mr. Carson: I don't know, but I don't think so.

Mrs. Orfirer: We've asked Gene to draft something and I think then we can discuss it a little more specifically. Looking at this draft providing for adopting a charter at the time of incorporation, isn't it possible to set it up so that it could be a concurrent vote, so that you're not only voting on setting up a charter but on incorporation?

Mr. Kramer: The constitution provides that a municipal corporation may adopt a charter. Until such time as an area is incorporated and is a municipal corporation there is no way that it can adopt a charter. It has to incorporate first and elect the officers and then adopt a charter. Under this proposal the general assembly would have to enact some provisions here, first of all, to define what a territory proposed to be incorporated as a municipal corporation would be in which a majority of adult freeholders have signed a petition and submit it to the county commissioners. What you could do then is provide for a period during which or a method by which the question of choosing a charter commission within that defined territory would be submitted, and to elect a charter commission from within that territory to frame a charter and submit it to the people within that same area, and the charter, if approved, would become effective to provide for the government of that area when it becomes a municipal corporation. That's a legislative question, and the general assembly has provided this for incorporation. This doesn't address itself to that question, as to how incorporation takes place.

Mrs. Eriksson: It would just presumably hold up the incorporation until the charter question is submitted.

Mrs. Orfirer: It just seems to me that you go through all of this business of appointing a charter commission, writing a charter, and it could sit there.

Mr. Kramer: No, it wouldn't sit there because the question would be settled. The incorporation would simply be delayed until the charter is approved. If the charter was not approved, then the incorporation would proceed, as provided by law.

Mr. Carson: Is this really a substantive change?

Mr. Kramer: One of the arguments that has been raised by township people is that a deterrent to incorporation is the form of government that the township would have to use when it becomes a municipal corporation and that they don't like the village form of government. It's too complex for their needs. But if they could incor-

porate with a different form of government, they'd do so. This would simply permit the incorporation to take place with a form of government chosen by the people. The charter form of government is neither village nor city; it's whatever the people want.

Mr. Carson: You said that if you go to the statutory form, you adopt the village form of statutory government. I think maybe I'm one minded, but the kind of townships I'm taking about aren't villages. They would be cities immediately.

Mr. Kramer: Again, that's a statutory problem because the statute now provides that you incorporate as a village first. Even if there are more than 5,000 people. Let's assume a hypothetical township or a hypothetical area within a township that wants to incorporate and they know that prior to their attempt to incorporate, they would like to have a particular form of government that would be provided by a charter. There's no way under the existing constitution and statutes that they could avoid the necessity of incorporating first as a village, having statutory form of government, and then going through the process, which takes approximately two years, as to convert to a charter form of government. In the meantime, you have to elect the statutory officers and then provide for getting rid of them. So this addresses itself to that kind of situation, which I assume is very limited in the number of areas that might be affected.

Mr. Helsel: If the problems that we're talking about reside in urban townships, ought we not to provide that the incorporation procedure and the charter commission and all would apply only to townships above a certain population?

Mr. Kramer: The statutes already do that. You can't even propose to incorporate an area unless it has a certain minimum population, population density and assessed valuation. Any area wishing to incorporate is subject to the same standards as the statute provides now.

Mr. Helsel: But here you're talking about 5,000 people spread out over a 50 square mile area.

Mrs. Eriksson: They couldn't incorporate because they wouldn't meet the density requirement.

Mr. Kramer: They would have to comply with whatever statutory provision there was. There's no constitutional provision for incorporation.

Mr. Helsel: I understand that but that statute could be changed to allow the kind of township that he lives in to incorporate and this certainly isn't what we're after, is it?

Mr. Kramer: That's right, but the question then would be whether you want to provide the incorporation standards in the constitution. There have never been in Ohio any standards provided in the constitution as to incorporation. It's always been a statutory matter, and the 3-mile limit for incorporation is statutory also.

Mr. Fry: I don't like putting statutory matters in the constitution. What we really want is something very simple, but as a political reality, I don't think we're going to get the general assembly to address themselves to reorganizing local government.

Mr. Kramer: As a matter of political reality, though, it's true that when you look at both Canadian and American experience, that proves that county or regional gov-

ernment in the United States moves at a glacial pace - that the only place we're really seeing something like effective regional government is in Canada where it comes as a result not of local action and the people determining themselves that they want regional government but as a result of the ability of the legislatures to mandate this kind of government despite the wishes of the people in those areas.

Mr. Fry: Why did the Canadian parliament or regional government mandate these changes and we don't do it here in the states?

Mr. Kramer: Because they have the power to do it.

Mr. Fry: We have the power to do it right now.

Mr. Gotherman: Local option is not part of their way of life.

Mr. Kramer: The residual power has always been there in the legislature and they have exercised it and they have provided for effective regional government. It is a real difference. In the United States there are very few examples of county charter government being adopted or anything like a regional government being adopted as a result of local initiative. A fairly recent example, of course, is the Indianapolis-Marion County situation which is not a full-fledged county government. The Commission has already proposed a very important change that would affect all of the counties by giving counties legislative powers.

Mr. Carson: But that's not done by the legislative authority - it's presented to the people, which is a big difference from what you were talking about in Canada.

Mr. Helsel: We may go through some different times and some different situations which may lead to it being a little easier to accept regional government. If we go to national land use policies on a regional level, I can envision municipalities wanting to get together in order to have more power and say so in the region. Beyond the county level, to get them to say, "Hey, maybe we need to do something," right now there's no good excuse or reason to do it.

Mr. Kramer: I tend to think, especially with the reapportionment of the legislature and the greater representation from urban areas, it's very doubtful that those incorporation standards are going to be generally relaxed. Obviously, it could become a constitutional problem if it were a question of such magnitude that there was a great danger of incorporation in areas that shouldn't be incorporated and the legislature was not taking care of the problem - then it would be a matter for the constitution. It's a question of whether that situation exists now. I think one matter to be considered seriously in connection with this draft. This procedure would be somewhat different from that of a municipal corporation that's already existing because there you have an established territory and you have a legislative authority already established that can put the question on the ballot, or you have readily available means of determining who the people who sign the petition are. And that's the reason why this section is initiated with the words "under regulations provided by law" because this is a case where the legislature would have to act to establish the means by which you determine the area that's involved and the time periods and how you would delay the consideration of an incorporation petition, at what point you would get that before you would submit the question of choosing the charter commission. And another question that's raised too is the question of paying the expenses of the charter commission for its work and for mailing of copies of the charter. In the municipal corporation situation that clearly is a municipal expenditure, and in the suggested amendments

to section 8 of Article XVIII that the committee and the Commission have already approved that this is spelled out explicitly that the municipal corporation is to provide for this. Where you have territories proposed to be incorporated which may or may not be a township or part of a township or parts of two or more townships, you don't have any readily discernible body which should be responsible for these costs. And it seems that the question would be difficult to solve in the constitution, so that this is something also that the general assembly would have to provide for, possibly by means of having the county pay for it and then when the municipality is incorporated, they would reimburse the county - something to that effect.

Mr. Carson: Could I suggest a very simple alternative, Gene? That is, in our report recommend to the legislature that they eliminate the city to village step, the village step by statute when an area of over 5,000 is involved.

Mrs. Eriksson: Our plan is to make such a recommendation so that you could incorporate directly as a city under the statutory form. You still would be required to adopt the city form of government and then choose a charter commission.

Mr. Carson: What about a village now going into a city? Do they have to first become a city before they can adopt a charter?

Mr. Kramer: No, a village can adopt a charter, which would carry over when they become a city.

Mr. Carson: It seems like a mechanical thing, and I just wonder whether it's all that important.

Mr. Helsel: Do you feel that it's wise to have a constitutional amendment to provide for this charter arrangement prior to incorporation?

Mr. Kramer: How else do you do it. The problem is until you have a municipality which has the legislative authority under the present constitutional language, there's no way to submit the question of choosing a charter commission. Because under section 8 the legislative authority of the municipality has to submit the question.

Mr. Carson: Who was it who made this suggestion?

Mr. Kramer: No one - it was just one of the proposals which has surfaced in all the township questions that have been raised. I suppose one factor to consider is how much application it actually has and that probably is impossible to determine. But there does seem to be in the existing system a gap there which perhaps logically should be filled. The people of an area may wish to incorporate, they may have a very good idea of the kind of government they would like to have, but the only way they can get it is to incorporate first and establish a statutory form of government and adopt their preferred form of government.

Mr. Carson: It might just be a great idea for them to practice a couple of years in the statutory form where the rules are pretty well established before they write their own charter.

Mr. Russo: Most charters are exactly the same.

Mr. Kramer: They're very much the same and of course it's possible in the charter

to adopt great amounts of the statutory provisions and make only those few changes that you wish to have. That's what a charter is all about. People can do as little or as much as you want. I think that if there is a real problem in the form of government upon incorporation then this is a provision that could solve the problem. It's a matter of judgment as to whether this is a serious enough problem to require a proposed constitutional solution.

Mrs. Eriksson: Does any member of the committee have any feelings about it? It was agreed to consider it again.

Mr. Kramer: Let us look at the draft for a new section 2 of Article X. Most of the discussion has centered around this distinction between so-called urban and so-called rural townships. There are real problems with overclassification. If townships can fall into those two general categories, and if, as is suggested here, the general assembly really would be able to determine the dividing line between the two classes - it would not be a rigid population figure as is provided for municipalities which are either cities or villages. It is interesting that using these tools of being able to divide the townships into two classes and determine the basis of classification that maybe the general assembly really could provide for the necessary differences in government and powers of the two kinds of townships. Obviously, if three or more would be required, there'd be a change. They do seem to fall into two general classes - those so-called urban townships which are in metropolitan areas surrounding cities and the rest are rural. The section is not really intended, except for that provision, to make any change in existing law.

Mr. Gotherman: Except for providing for classification, can't the general assembly do all the things that are outlined now?

Mr. Kramer: Yes, so that's not an attempt to change existing law. If you look at the language of existing Article X, section 2 you find that it's really a mixture of some very specific powers rather than being, as in the case of Article X, section 1, relating to counties and Article XVIII, section 2, relating to municipalities, a general statement of the power of the general assembly with respect to that particular form of government.

Mr. Carson: But the courts have held that the legislature does have the power to do all these things, even though the constitution seems to be rather specific in them. Can the legislature change boundaries?

Mr. Kramer: Yes, there are many provisions for the way that township boundaries are changed and townships are abolished. When the township becomes co-extensive with the municipality the township is automatically abolished. In some cases though, if incorporation takes place, a new municipality may be entirely within a township and part of the township also exists outside the municipality, then generally the township continues to exist so that you can be a resident of both a township and a municipality.

Mr. Carson: Could the legislature today just abolish a township and incorporate it into an adjoining township?

Mr. Kramer: Not by special law, but by general law. After all the incorporation, 20 square miles have to be left over. If the remaining township is less than 20 square miles have to be left over. If the remaining township is less than 20 square miles, it automatically goes to an adjacent township. There are quite a few provisions relating to township organization and they get to be fairly complex.

But there's no real question about the ability of the general assembly to do that as long as it's done by general law.

Mrs. Eriksson: If the general assembly wanted to abolish all townships, could it do that?

Mr. Kramer: That's a question which can be raised and to which we have had no real answer but since the townships existed before the state, it can be argued that the Constitutions of 1802 and 1851 were adopted within that framework of existing townships recognizing that they're permanently embedded in the Constitution. So perhaps the general assembly could not abolish them altogether, but I don't know whether that argument would be upheld by the Supreme Court. If the general assembly wanted to do that, this provision providing for the dissolution of townships probably would obviate that argument. This is the same language that's used for municipalities - organization, consolidation, division, dissolution, alteration of boundaries in government. That is deliberately patterned after that.

Mrs. Eriksson: As recommended by the committee. It's not the existing language.

Mr. Kramer: One of the real problems of the larger townships does relate to the form of government. When you look at the listing of township powers and duties that are provided and all of the things that they can do, you see that there is quite a formidable list of things for a township trustee to undertake and they might be better off with the government more on the model of the municipal type of government. This would permit the general assembly, if it chose to do so, to provide a different form of government for those townships as compared to the rural townships.

Mr. Carson: Have you analyzed what aren't in this list of powers?

Mr. Kramer: They don't have utility powers, they don't have power to levy an income tax as municipalities do.

Mr. Carson: How about swimming pools?

Mr. Kramer: It's part of parks and recreation facilities.

Mr. Carson: You're telling us that townships have almost as many powers as municipalities. Probably, they've got all they need. And that's just contrary to what everybody's been saying.

Mr. Kramer: I think there is some lack of recognition, on the part even of urban townships, as to what they really can do and many of these things are of fairly recent vintage too. There's been a great deal of amendment of the township sections in recent years. In practically every session of the general assembly they've been adding to those township powers.

Mr. Carson: Would it be possible to have a list of those missing powers put in?

Mrs. Eriksson: Certainly it would be possible to compare the township powers with the statutory powers - cities that operate under statutory plan. But because, as you well know, the meaning of home rule may mean that there are things that cities can do that they maybe don't even know about, it would be kind of hard to say that we have an exhaustive list.



Mr. Gotherman: It is less a problem what they're legally empowered to do than it is what they're physically and organizationally structured to do. With 3 township trustees who work on a limited part-time basis, even with all these powers, you're really not physically structured in most townships to assume these powers. Or financially. I think that's a far bigger problem really than having the powers.

Mr. Kramer: There is a governmental problem in the provision here for classifying that would permit the general assembly to provide a different form of government to handle these problems.

Mrs. Eriksson: I looked at a number of studies of annexation proposals and the most outstanding problem that the township people expressed in those studies was the lack of adequate sewer and water facilities - their inability to acquire those services or demand them from the neighboring municipality or pay for them even if they had the power to buy them.

Mr. Carson: Gene, isn't really what you're saying that they have everything they need except their organization is deficient?

Mr. Kramer: Most of the ability to levy taxes is only with the vote of the people. They do have a share of the ten mills. For road improvements they have a share of the state gasoline and prices taxes. And they can charge fees for refuse collection and disposal service and they can levy assessments for road improvements also. They do have some limited funding and the structure is not really conducive to carrying out the full range of powers. Three elected townships trustees, an elected clerk treasurer - that's the basic structure of the whole government. They can establish a full-fledged police department, a fire department and have all of those officers. But there's no structure of safety department, service department, administrative agencies to carry out a lot of these powers that might make them more effective in the larger townships. But I think it's difficult to say that townships simply don't have a large number of the so-called urban-type powers. In many areas you'll find that in the case of hospitals and fire protection that the townships are really on an equal footing with the municipalities because they form these joint hospital districts or joint fire districts - even joint police districts - much operating in common in those areas.

Mr. Carson: What do we say with respect to classification of counties?

Mrs. Eriksson: Not more than 4.

Mr. Strozdas: One thing that you don't want is to end up with a municipality and you call it a township. If the goal is to stop the proliferation of municipalities, then you don't want to fool yourself by giving more powers and tell them you're calling them a township when you could not look at it and distinguish it from a municipality in terms of powers and structures.

Mr. Carson: But the legislature has that power now, do they not?

Mr. Strozdas: Yes, I would think they probably can make townships into municipalities just by giving them additional powers. I don't know whether they could give them those broad home rule powers or not, whether they could give them just a broad grant of power or whether they would have to enumerate powers.

Mr. Carson: This wouldn't permit that either - a broad grant of home rule power?

Mr. Kramer: I don't think so. It seems to me that if the general assembly can by single act give the townships what amount to home rule powers, then Article XVIII, section 3, is pretty superfluous.

Mr. Gotherman: Why would you want more than two classes?

Mrs. Eriksson: With respect to municipal corporations, the classification is meaningless partly because of the ability to adopt charters. But we're assuming here that the general assembly would provide a different kind of structure and possibly different powers.

Mr. Carson: If this committee and the full Commission did decide on a different classification system or categories for counties, my question is whether we felt more than two was necessary for counties, is there any reason why that same philosophy shouldn't apply with respect to townships?

Mr. Kramer: It's one of those things that's very difficult to determine because you're talking about something of which you really don't have any experience. You have to make what you hope is an educated guess, the number 4 for counties is fairly arbitrary. Originally there was no limit recommended - it was left to the discretion of the general assembly. Just working on the basis of all of the discussion that has been presented to the committee thus far as to the townships, nobody has really attempted to break this down any farther than urban and rural. And from my own experience, I tend to think that those represent probably two broad categories that probably would suffice. I doubt that problems of your township, Nolan, are that much different from the relatively small number of similarly situated townships in other counties that are around major cities.

Mr. Gotherman: In my experience with townships, you don't find that large difference that you find with counties. Cuyahoga County is a lot different from Franklin County, and that's a lot different from Clark County which is quite different from Vinton County. But in townships, you're either like Boardman or the township that you're in, where you're next to a municipality feeling the growth, or you're out in the country. In some cases these two are right side by side. I think in our situation, the townships right next to us have an urban characteristic and then right next to them have a highly rural - they're just entirely rural - mostly farms.

Mr. Kramer: Townships, just in the way they're established, have a fairly uniform size which is another very much distinguishing characteristic from either the municipalities or counties. Some of the townships have been cut down in size because of annexation, but they don't have a great disparity in geographical size that the counties have. There is not, of course, the great differences in population.

Mr. Strozdas: I think there are real hazards in classifying counties and townships really. I think this begins to result in legislation which is applicable only to one or two counties - special legislation - and it would seem to me that legislation which is passed for the good of the largest county should be equally applicable to the smaller counties. Mr. Strozdas presented the Municipal League's position on townships, which will be submitted later. It was agreed to again invite township representatives and county representatives to be present at the next meeting, to be held on the afternoon of June 17.

The meeting was adjourned.

June 5, 1974

1. Townships should remain a transition form of government in urban areas. That is, township government should serve those needs of population centers located in unincorporated territory only during the period of transition from rural to urban. After the area is urbanized it should be available to existing municipal corporations by annexation.

a. In limited circumstances, new communities may need to be incorporated as municipal corporations. But the criteria and method of incorporation should be determined by legislative action of the General Assembly, not constitutional mandate.

2. Why not offer, by constitutional amendment, the right of the people in each county to vote every 10 years to do away with township governments in the county. (A county by county vote mandated by the constitution.)

3. If expanded township powers are needed, then this should be a concern of the general assembly and not constitutionally mandated.

4. Expanded township powers would result in a municipal corporation by another name.

a. Problem of some municipalities (most villages and some cities) being in an existing township.

b. Would bring about a further proliferation of viable local units of government at a time when consolidation should be encouraged.

c. Would practically stop all future annexations of unincorporated territory to existing municipalities and cause them to suffer economically and socially due to an inability to have reasonable expansion of their boundaries.

5. Giving townships more powers would make the future role of county government less viable. The goal should be to limit local government units providing other

than special functions, to municipalities and counties.

6. Townships already have limited powers in most areas including: police, fire, road and street, and various legislative powers such as zoning, etc.

a. Only powers not granted are utility services and broad legislative powers.

b. Taxing power of township is governed by the legislature. They may now tax property and transient lodgings. (hotel-motel tax on establishments in unincorporated areas)

c. Municipalities have more taxing powers only in the taxation of income and permissive motor vehicle license taxes. (where the county has not levied the tax)

d. Greater powers can be granted by the General Assembly, whether limited or more general powers.

7. Ironic that even now townships can have a profound effect upon cities, but cities have none on townships.

Generally - residents reaping benefits of the cities without any of the responsibilities.

Ohio Constitutional Revision Commission  
Local Government Committee  
June 17, 1974

### Summary

The Local Government Committee met on June 17 in House Room 11 of the State House in Columbus. Present were committee members Nolan Carson, Reps. Charles Fry, Anthony Russo and Sam Speck; and Edwin Heminger. Mrs. Eriksson, Director of the Commission attended. Also present were Chester Hummell representing the Township Trustees and Clerks Association, Frank Weikel, Township Trustee Springfield Township, Hamilton County, W. Emerson Rhoades, Township Trustee from Delhi Township, Hamilton County, representing the townships, Norman Sponseller, Stark County Commissioner, Donald Kauffman, Richland County Commissioner, Richard McFarland, Fairfield County Commissioner, representing the counties, Sue Cave of the Ohio Municipal League, Ed Loewe of the Ohio Chamber of Commerce, and Lois Mills of the League of Women Voters.

Mrs. Eriksson: This meeting is being held for the purpose of obtaining the opinions of township representatives. It was also suggested at the last meeting that we ask the County Commissioners Association to invite some county commissioners, and the Ohio Municipal League is represented. We did have some Municipal League members, some city officials at our last meeting and those city officials did make a statement and expressed their thoughts on what the constitution should or should not do about townships, which is of course the basic question that is before us.

Mr. Carson asked Mr. Hummell to begin. He noted that Mr. Hummell's prior statement had been distributed to all members.

Mr. Hummell: Mr. Chairman, I really have nothing new to add to the general statement I made here some 2 years ago. In summary, our association feels that the main problem that perhaps this commission should address itself to is the lack of authority of the first level of local governments to serve the people in the unincorporated areas. In reference to my statement, this problem was solved in 1912 for municipalities when they received home rule power from the Ohio Constitution. And at that time, there was no demonstrated need for this power or anything similar to it for the unincorporated areas because they were so sparsely populated. We all know what's happened in the interim. We have many areas, I won't classify them politically, but many areas in the unincorporated parts of the state that are heavily populated now and by reason of the heavy population they have problems now that municipalities had some 60 or 70 years ago. The townships, like the counties, as you all know, have only the authority specifically granted to them by the state legislature, whose other incidental powers must necessarily be inferred from the specific grants of power. By and large, the Ohio general assembly has done a pretty good job of granting townships the authority to meet the major problems for unincorporated area and I refer, for example, to zoning, police protection and fire protection. But there are problems that are of such a nature that they are peculiar only to certain localities. For example, a problem might arise in Delhi Township in Hamilton County that would not be prevalent in one of the large townships in Mahoning County. In the same way, we have problems in Cincinnati that aren't common in Youngstown. But if we have problems in Cincinnati that aren't common in Youngstown, the municipalities can solve these problems as they come up by reason of their home rule powers. It is our feeling, in summary, that this legislature should address itself to a means of providing a solution to these problems which is really what the people of Ohio need. Some criticize granting a certain measure of home rule power to townships, saying that this looks like the same power municipalities have. And I say, yes it does, and there is no reason to

apologize for this at all unless we take the position that the people in an unincorporated area just aren't quite worthy of the same type of government that the people in the incorporated areas are. Very simply, and to vastly oversimplify the situation, the people in many of these highly populated unincorporated areas have the same problems as the municipalities have and we feel should have the same tools in their local level of government to solve these problems. There have been efforts made in this session of the Ohio General Assembly in that direction, I'm very happy to say. Some of these take the approach of granting certain statutory authority to townships which they don't now have - another took the position of granting certain limited statutory authority to counties that they do not have. We feel, in our association, that county government certainly should be granted powers but we do not feel that the county can provide the whole answer to the unincorporated areas in its boundaries any more than they can provide the answers to the incorporated areas, because county government represents the entire county. We would like to see county government strengthened so they can adequately serve the people, but also think there is a real pressing, and a long overdue, need to have additional authority at the township level. We think this should be on the permissive basis. By that I mean, it should be on the basis that the people in the township should be able to elect to have this authority. And I say this because out of the 1320 townships in the state, probably certainly fewer than 10% have problems today that they cannot solve with their present statutory form of local governments. And these 10% or fewer today need some additional authority to satisfy the needs of the people. I could take the time of this commission to give maybe certain illustrations but I don't want to do that now. Illustrations of problems that, say, my local government can handle because I happen to live in a little village in Franklin County. I go outside of my village limits, and my neighbor outside of the limits has the same problem but he has to come to the state legislature to get them solved. This puts a tremendous burden on the state legislature, which is flooded with bills every year dealing with county and township problems. We could minimize their problems and yet do a better job for the people in unincorporated areas if we would grant some general authority at the local level. Mr. Chairman, I believe that would be my general statement here. I hope to enter into discussion later.

Mr. Fry: Mr. Chairman and township representatives, I think that the sentiment has been at our local government committee meetings to give more authority of the home rule nature to both county and township governments where you really need it. Where you've got large populations - you're the real government. I know in Hamilton County you've got several townships like that. Now, are there other areas where it's hard to justify township government? And do you think if we gave the people a chance to say "we want a charter type or a home rule type of government in our township", there would be other areas where the voters in the county might be given the opportunity to say "our problems are such that we could get along without that extra level of government".

Mr. Weikel: The only thing that we're asking for is permissive legislation. We feel that there are townships and there are areas that don't want this - they don't need it.

Mr. Fry: Do they even want township governments that now exist?

Mr. Weikel: Yes. I might a little later on in some prepared remarks answer that.

Mr. Hummell: Under a very recent revision of the Illinois Constitution, a vote on the question of whether or not a township government should be retained is permitted.



It is my understanding that the county commissioners can put this on the ballot. That issue was put on the ballot last year, and in some few townships with very sparse populations and the overwhelming vote there was to retain it.

Mr. Fry: Could each county go its own way?

Mr. Hummell: That's my understanding of the constitutional provision.

Mr. Loewe: If the township ceases to exist then it no longer becomes a subdivision of the county and it's just part of the county with no boundary lines or service areas.

Mr. Rhoades: That's the way it is in Kentucky right now.

Mr. Carson inquired about township population.

Mr. Russo: Why don't townships want to become municipalities? What is the great disadvantage?

Mr. Hummell: I think there are certain provisions in the statutes right now which prohibit townships from incorporating. For example, they could not meet, perhaps, the population density requirement.

Mr. Russo: Those that don't have that kind of a population wouldn't want to incorporate anyhow. But those that can incorporate - those that have the population - those that are saying, "give us the privileges that we are asking from the legislative body but we want to remain townships". Why is that?

Mr. Hummell: If you had a township that could, under statute, incorporate and doesn't want to, I don't know. One very big hurdle now is the prohibition against incorporation if you're within 3 miles of the existing municipality.

Mr. Carson asked Mr. Weikel to proceed.

Mr. Weikel: I'm a newspaper columnist for the Cincinnati Enquirer. I'm in the second term of township trustee in Springfield Township, Hamilton County, Ohio. I'm vice president of the county association and a member of the board of directors of the state association. If I might, for those of you who aren't familiar with the complexities of metropolitan townships, let me give you some examples of what we in Springfield Township and urban townships, in general, face. Our population is near the 45,000 mark. It includes 76 miles of township roads which we must maintain. Twenty-five miles of county roads are patrolled by our police in addition to this. We have a couple of miles of state highway and a small portion of interstate highway. Last year we had, at one time or another, 66 different people on our township payroll. This breaks down to road crews 10 full time employees. We have a 25 hour a week time-keeper, we have our own police department, full time - 23 members. Our patrolmen are payed a minimum of \$10,500 a year up to the ranking chief which is close to \$15,000. We have crossing guards at our school locations - 10. We have a fire prevention officer, two recreation coordinators, a zoning board secretary, a zoning board of appeals secretary, a zoning inspector, legal counsel, and four summer help employees. We have township zoning, as I mentioned, and this requires us to appoint without pay a 5-member zoning board of commissioners and a 5-member zoning board of appeals. We have appointed an advisory commission to help us on recreation, also serving without pay - 9 more people. In addition, Springfield township operates a volunteer bureau staff to provide senior citizens and other qualified individuals with supplementary social security income information and helps

them get food stamps and other things that we feel is close to our own area that they might not be able to get it by going downtown to county government. The township supplies fire protection and ambulance services for 9 different fire districts. Our budget last year topped \$1,500,000 and we anticipate submitting a budget this year close to \$2,000,000. That gives you a brief thumbnail sketch of the complexities of the metropolitan township.

Now, let me move, if I might, to why it's important for you to assist the townships on this. As you know, today is the second anniversary of Watergate. And the people have lost confidence in most areas of government with one exception - township government. It's the oldest form of government and still untainted by scandal. The trustees and clerks run, like judges, on non-partisan ballots. It's the closest form of government to the people. To answer an earlier question, it is also an economical form of government, which the citizens like. It still has the favor of the community. However, ladies and gentlemen, we must have some tools to operate this government. Let me cite you a few examples. In the incorporated areas around us, the villages and municipalities have on their books solicitation laws. We don't want to keep out people like the Avon products and the fine solicitors that come around and talk to us at our homes. But we do want to keep out the fly-by-night solicitors that come in, and our neighboring communities all adopted regulation which simply requires a solicitor or peddler to come in and give the name, address, and location where they're located in doing business out of. As a result, the booksalesmen, the Williamson clan which is a band of gypsies, they stay out of these areas. And they come into our area, and all unincorporated areas and just are a plague of locusts. We get hundreds of complaints, and by the time we locate which motel they're operating out of, they're gone out of our community and the damage is done. An example of what happens is a book salesman comes up and a lady doesn't want to buy a book and she tells him no, and he looks at her house and says, "I wonder how fast your house would burn." And she calls the police. We can't find them - their car's gone - it took us three days to locate them and they're gone. But it certainly caused some damage. The communities around us have also established, because of juvenile problems, curfews for juveniles. It's worked well in some of the communities, and some of our citizens come in and ask of our police department could not establish a curfew. We have not been able to find such authority and this is one of the things that we would hope to get with ordinance-making authority. We had a situation in Hamilton County similar to the Boston area. A strangler was hitting. Nine women were raped and murdered. Our road crew - the 10 people I told you about - were around picking up brush and debris in the yards, doing their normal work, and we were inundated with a number of telephone calls. "Strange people at our house - send the police!" So we solved that problem by putting our road crew people in uniforms - identifiable as Springfield township road employees. We were told that this is an illegal expenditure by the state auditor and we cannot do it because the legislation is silent on it. The people that operate Rent-a-Kid programs came into Springfield township. They had staff and set up a program - but needed some funding from us that would permit us to pay their staff. Thanks to revenue sharing we did have some funds available, but when we asked the auditor, he said we could not help in this worthwhile project so we ran into some difficulty there.

The dilemma of the township is growing each year. I'm not going to go into a long detail giving you a history of townships, but as you well know between 1960 and 1970, metropolitan townships grew in population by almost 17% compared with the 10% for the state as a whole. Increased population involves increased service demands. The township structure was developed 170 years ago and today is not suitable for providing the full range of services needed by the urban township residents and powers are needed by our people and deserved. Let me now conclude, if I might, by giving you some recommendations. One, ordinance-making

authority for board of trustees in urban townships on a permissive basis in any matter that is not specifically prohibited by the general law of the state of Ohio. Two, power to levy an earnings tax or an income tax with voter approval. Many of our residents pay an income tax to Cincinnati, but none of this revenue comes back to us for services to our people. And lastly, consideration to be given to townships - I give an arbitrary figure here of over 20,000 in population - to be permitted to appoint a township administrator on a full-time basis because this is big business that we are operating. These three are crucial. There are those who have said that there is no need to change township government. They argue, "let them become a city if they want home rule." This is a very insensitive response. The people have a right to choose what type of government they want and they have expressed in our township preference for township government. I urge you to give us the tools to make our services what they need - good and efficient. Thank you for the opportunity and I'll answer any questions.

Mr. Carson: Just one fact. Did you mention population?

Mr. Weikel: Around 45,000 in Springfield township.

Mr. Carson: This report (referring to a Local Government Services Commission Table) says 41,611, second in the state, apparently.

Mr. Weikel: I don't think that's accurate any more. It's around 45,000 now.

Mr. Carson asked Mr. Rhoades to speak next.

Mr. Rhoades: I'm a township trustee in Delhi Township which is one of the larger townships in the state with some 25,000 people. I am, by profession, a stock broker. Formerly, a full-time broadcaster, presently employed on a part-time basis by WKRC in Cincinnati. I was a member of the Local Government Services Commission for two years by appointment of the Governor. What I want to make to you is two appeals. First, an appeal to reason and second, an appeal to practicality. An appeal to reason is merely this: right now, through a system of state laws, we in Delhi township are prevented from upgrading our form of government and changing our form of government or if we live in Delhi we don't have the same rights as people who live in municipalities. The state law that prohibits our incorporation if we should choose that course was passed in the late 60's - 67 or 68. The law has never been tested. It puts us in a position where our people can't come to us to solve the problems that need to be solved. It makes no sense when you look at Hamilton County with 6 townships and more than 25,000 people and little tiny cities of 638 that have home rule power. Now it's just plain, flat out, inequitable. It's a violation of our civil rights. It probably couldn't stand according to the constitution of the United States which guarantees equal protection under law. By living in a township right now, I don't have it. Now that's the appeal to reason. The appeal to practicality is simply this: the Commission has come up with a set of recommendations for the improvement of county government. So has the commission that I worked on. I opposed them for a very plain and simple reason. Right now, taking the example of Hamilton county, 75% of our people live in incorporated areas - little less than 50% in Cincinnati, 20% in the cities and villages, and 25% in the townships. I am not going to sit by and allow our local responsibilities to be put in the hands of a county government. It's that cut and dried, that is why alternative form hasn't passed in 40 years and that's why any proposal to upgrade county government won't go either. It will meet with statewide opposition on an organized scale. Now, we don't want to deny the county an improvement that we feel they need, but what we're saying is this - you can't have a county existing

half slave and half free. If the people in the city of Cheviot can go to their local community for local ordinances and decisions, you can't tell me that I've got to go to the county courthouse. And this is really what it comes down to. If you really want to improve county government, every single unit on the local level has got to have the same rights and responsibilities. They either can opt out or opt in, but they've all got to operate together. Because as it stands now, the county commissioners who are elected by the whole county, less than 25% of their vote will come from township residents, in Hamilton County. That's a violation of one man one vote. So the point is we've got to get together on a quid pro quo basis. You can't give home rule to some communities and effectively not give it to others. It's just flat out wrong and yet that's what the state of Ohio is doing. And I submit it makes no sense.

Mr. Speck: A couple of questions. Most of the discussion up to now has focused on changes in the powers that would be given to townships and I'm generally sympathetic to enhancing the powers of townships. I didn't hear any comments in terms of the structure of township government, perhaps dividing it up into wards and this kind of thing where you get a township of 45,000 individuals, or at least a larger board of township trustees. I would be interested in hearing some responses in that respect. But in my own district, I know of problems where there have been townships losing population. They can no longer really function very effectively. The question comes up: do we need a change in structure to make it easier to define townships? These would be my questions in terms of a restructuring.

Mr. Hummell: Mr. Speck, you always have nice questions. We do feel that the township should be restructured if it has ordinance-making powers. Our recommendation is for at least a 6-member legislative body, but only in those townships that have the ordinance-making power. I suppose we took this figure because that is the legislative body of a statutory village. We are not locked in on this. We do realize that the 3-member board does not lend itself to this type of government. And it should be larger. Now, whether it goes into wards or districts within the township is an open question.

Mr. Speck: Would you favor home rule in terms of charter type option for urban townships?

Mr. Hummell: We think that's one possible solution where the people would vote: do we want a charter form of government. And if they do they would adopt a different structure and with that structure would come the additional authority. Then to your other question about the smaller townships, I think if we get right down to the basic philosophy of our democratic society, the people we think should be allowed to vote on this. Now, this has not been a policy that's been adopted by the board of directors of our association. There was a man in my office a few months ago from one of the smaller townships from a district farther south than you are and his township had a population of fewer than 800 people and had a budget of something like \$30,000. He was hard pressed to find the money to do the things that he thought the township government should do for the people. And it might well be that somebody would suggest that: you just haven't got it. Maybe until you have more people and more money you just can't function properly, but he, of course, was not receptive to this suggestion.

Mr. Speck: We get into this problem particularly in surface mining areas. Should there be some mandatory level of population requisite for being a township and having township government in the first place?

Mr. Hummell: I have always shied away from this area of saying mandates from the legislature on any given level which has to be so and so, because you can always find exceptions, when you sit here in this nice committee room and legislate for what's going on in Fulton county and Meigs county and so forth. But why not leave it up to the people - let them vote on whether they want it or don't want it. Just as they do in Illinois.

Mr. Fry: What was the reference to Kentucky?

Mr. Rhoades: The plan is they just have the counties and if you're incorporated you're incorporated and if you're not you're in a county, and there are no townships. The cities have been gradually annexing and moving out.

Mr. Speck: We haven't made any recommendations as a Commission in this area, have we?

Mrs. Eriksson: Only the county recommendations.

Mr. Rhoades: Which would adversely affect the township - that's our point.

Mr. McFarland: Mr. Chairman, you're worrying about county government being controlled by the cities. How would you handle this type of thing in the townships? I know many of the townships have corporations within them and the township could be likewise controlled by those corporations.

Mr. Rhoades: It's been my experience that most of the villages that are part of townships are pulling out and forming their own townships because of revenue sharing primarily. But I think there is a validity, even if only 5% of the county was in the township, you can't say that 95% of the people are going to vote on their officials.

Mr. McFarland: Would you ask them for the unincorporated area only?

Mr. Rhoades: Certainly, for the unincorporated area only of the township. You see, our township is self-contained.

Mr. McFarland: You would then force the municipality to withdraw from the township?

Mr. Rhoades: It's our experience that most of them are asking to now anyhow.

Mr. Weikel: We had one where the last village or city in the township withdrew last November because of revenue sharing. On their own they can do much better financially. But just because you're an urban township doesn't mean that you don't have the problems that are faced by a farm community. I've solved or had line problems in our area where cattle had been going over. One of the insensitive type things that I think happens occasionally at the county commissioner level - at a recent meeting, we had a gentleman come in that is very allergic to poison ivy and on some county property within the township on the county right-of-way was loaded with it. So we explained to him that it was county property and that we would see what we could do. The auditor again told us that we had no authority to spend money so we wrote a letter to the county commissioners. I got a letter back on May 28 from the administrator of the county commissioners explaining to us that the matter came up on their agenda, and I quote the second paragraph. "As a matter of fact, this request caused some chuckles on the part of the commissioners who had never before received a request to kill poison ivy." Now, it might have been small



to the commissioners in a metropolitan area where they have a million people but it was important to this individual. And this is why we find that the citizens in our area like the township government. They have a better communique with us, and they can go to us and we understand the problem.

Mr. Carson next asked the commissioners for their remarks.

Mr. Carson: Are you aware of the background of what this Commission has already recommended with respect to county government? Very briefly, as I remember it, the full Commission recommended a change in the provision of the Constitution dealing with the right of a county to establish a charter form of government. In effect, the recommendation would eliminate the three vote requirement and permit a charter to be adopted by simple majority of the county. Secondly, we have recommended a change in the Constitution to give implied powers to all counties in the state - in effect giving some ordinance-making power to the county commissioners. Thirdly, it has recommended a change which would permit counties to be classified in legislation that passes different types of legislation so that, hopefully, problems can be solved more effectively.

Mr. Sponseller: I served as a township trustee in Boardman township. We faced many of the problems that these two gentlemen today say they face. I am in my seventh year as county commissioner, serving as secretary of the state association. I would certainly have no quarrel with the township form of government. I think they function as the grass roots government closest to the people. I would not speak in any way to deter the township effort in trying to apply themselves to the problems that come to them in the township hall in your meetings (every week). It would seem to me that some of the things that have been said point to an overlapping of authority, but township government does serve a purpose. Some of the reasons they seek additional authority are the same reasons we do. I refer to the point raised by the gentleman from Delhi County and their worries of county commissioners coming from distant cities and the rural areas not being represented. We have three major towns in Stark County: one of 110,000, another of 90,000, and another of 72,000 and two of the commissioners happen to be from outside of any incorporated area and I happen to be one of them, and the other gentleman is from the largest town, which is Canton. The power in our particular county is pretty well balanced as to rural versus municipality. We have yet to have our first town come in to be withdrawn from township form of government. Possibly one of these days it will be arising, but at this time it hasn't. As to home rule authority to be given to the townships, I think there should be a choice. We certainly have some counties where townships would not be interested in having the ordinance-type of legislation handed to them. I particularly like the fact that it gives a chance for any ordinance that would be undertaken for the people to vote on it or have a referendum vote on that and that makes good sense. As to how you structure it or how many elected officials there should be - whether the number should be increased, I leave that to the wisdom of the legislature as to what they feel is best, and what would be better suited for the particular areas. I think if you ask for the charter form or alternative forms I'm afraid that you can run into a headlong problem. I think that the home rule authority should be looked at first. We're down here indefinitely bending legislators' ears, constantly asking for legislation to be changed to meet the specific needs that arise in each of the some 88 counties, and certainly spend a great deal of your time trying to sift the chaff out of the grain as to what's good for and how it can be applied if in case it will be, whether the law can be applied in the other 87 counties.



In the past 10 or 12 years we have seen the exodus of people going to the suburbs from the cities. And to have someone call you on the telephone and not be able to deal with the problems as was once dealt with when they lived in the city is pretty exasperating to any elected official, whether he be commissioner or township trustee. And certainly that citizen who has moved out of the city should not be looked upon as a second-class citizen. I would say that I feel that any elected official on the county level certainly should not be looked at as a second-class elected official and not have the authority to make the proper decision for the people they represent.

Mr. Carson: Thank you, Mr. Sponseller. Let me ask one question and make sure I understood. Do I understand you saying that you had no objection toward giving selected townships that need it ordinance-making power? Did you then say you think that ordinances adopted ought to be voted on by the people of the township?

Mr. Sponseller: I think they should require readings, so that they cannot just arbitrarily pass it - read it this Monday night and then not have the chance to have someone come in and question it and find out why the officials of that particular township made that recommendation, any more than I would want to make an ordinance in the county without giving the voters the right to have someone come in and question my authority and my reasons for making the decision that I made.

Mr. Carson: Mr. Kauffman, do you have any comments?

Mr. Kauffman: I was a township trustee for some 7 years before I became county commissioner in Fairfield County, and I'm now in my second term as county commissioner, so I'm somewhat aware of the problems that exist in towns on these two local levels, and I believe that the closer you can keep the government to the people here today - the better these people have of representing them. You know the problems and this is really the best way to solve them. I think it was also said that you need tools to work with. I think this is also the legislature's job to better provide townships with these tools. So if they had the opportunity, if they had the tools to work with, I feel sure that they would be able to administer to the people the best type of government. The closer you are to the people, the most economical type of government you get. The farther up the line you get to government the more cost there is. This is one of the first basic type of government we've had for 200 years and I would certainly hate to see it move out of existence, especially if it is the people's will and I think it is the people's will to keep the local government as close as possible so that they have a voice and have control. Thank you, Mr. Chairman.

Mr. Carson: Thank you. Mr. McFarland.

Mr. McFarland: I served as a township trustee for 15 years and am now a county commissioner in Richland County. Certainly, I think we all realize that the day of a trustee as being simply an arbitrator of line fences is a day of the past as well as the commissioner being an officer who comes in once every two weeks and signs the bills and takes care of the drainage ditches. Our problems are quite similar to their problems, because of the growth, particularly since WW2, since we got the country out of the mud, with people wanting to get away from the problems of the cities and migration out to the unincorporated areas. I'm sure that somehow we've got to have some unified method of serving these people. Sometimes they move out into the country and expect all of the services of the city, but nevertheless they do have a right to some of these services. We have to set them up with a vehicle, I think it has to be a combination of the county and township to solve these problems - street problems, light problems, water problems, sewer prob-

lems - you can go on and on. I certainly have little quarrel with the argument which the gentleman from the Township Trustees Association has brought before you. As I say, I've been there and I know it's frustrating to have these problems and have to tell the people that there is nothing you can do for them. I am sympathetic. However, I would want to emphasize that in the office of commissioners we certainly need powers that would have been given to us in S.B. 220. I'm disappointed that the people in township government took a position of opposition. I think counties have to have additional powers. And townships certainly need some like power. To what extent I don't know - I'm not qualified to be able to sit here and say, but I think we have to get together and find vehicles that are not in conflict. I see the problems we have with the cities, where a man draws an imaginary line and says it's my jurisdiction up to this line. There's no way of getting together even though the particular problems of water and sewer cross these imaginary lines. I think we have to somehow find vehicles to solve these problems. I think that's all I have to say. Thank you, Mr. Chairman.

Mr. Speck: I always feel I'm entering a boxing match where the gloves never touch. We talk about home rule for counties and home rule for townships and we can all pay lip service that those should have home rule. But one of the really difficult problems seems to me: what do you do when the home rule exercise by one comes in conflict with the home rule exercise by the other? Who has precedence? How do you resolve potential conflict between home rule powers for counties and home rule powers for townships?

Mr. Rhoades: If I could answer that, it's the same thing as home rule for cities and villages and home rule for counties. In other words, what we're saying is that you can't build a house when you start with a roof. The foundation has got to be there. And you recognize it the same way as you'd have a problem between the city of Mt. Healthy and the city of North College Hill in a county. In other words, everybody on the bottom level has got to be on the same level, otherwise the thing will never fly. That's the point we make. Everyone's got to be at the same point. Then they get together at the upper level of government.

Mr. Speck: That's great, but I still don't know what you've said. Specifically, what do you do when you've got home rule exercised by a county and home rule exercised by a township and they're in conflict?

Mr. Russo: Let me give you an example. In Cuyahoga County, we've got a regional sewer authority, but just say it was a county authority. When this county authority now determines that these are the plans for the county. The townships now have their own self-jurisdiction. We've got a conflict going here now. We say a 12" pipe is going through the Delhi and they say no, you're not coming into our township at all because we've got our own plan here. How do we resolve this?

Mr. Sponseller: I think you've raised a very interesting question and I think it's very easily answered and let's look at it from the dollar standpoint of view. I don't think any township can afford to set up a sewer system.

Mr. Russo: The argument that you've all propounded was that when you keep a government at the local level, the cost of government is cheaper. Now, if you're going to talk about sewers, and you're going to keep it at the local level, is it cheaper or are you going to give it to the county where it's cheaper.

Mr. Sponseller: Mr Russo, I think that the counties and the cities have had proven track records in handling sewer problems. I do not know of any townships that are

in the sewer building business nor in the sewer plant. I think that they would be looked upon as a bad entity of government by the federal government to receive federal funds for this sort of thing and the way federal funds are coming through now, it looks as though we're talking about more counties or more political jurisdictions of cities and counties together to receive funds with the way the distribution of federal funds is going to go. The laws are pretty specific between county and township government. We have no desire to take away any of the zoning rights that any township has ever passed. We do not want to supercede their authority of making that. The same way with the water plant. I don't know of any township that has control of a water plant. I'm probably wrong when I say that but speaking from limited experience I don't know of any. I think that would come from the city or the county which has a broader base to attack it with a bond issue - they would be able to float the bonds which would be able to be paid back at the end of that time. We would not want to set ourselves up as the garbage collectors of Plain Township, where I live. But if that would so be the desire of the township trustees to have some sort of garbage disposal service for them that would be perfectly alright with me.

Mr. Russo: Some counties are having studies done on garbage disposal. And you know that the state of Ohio already is considering full control of garbage disposal in the state of Ohio and has several bills pending already, but not withstanding your own philosophical concepts of what local government should be all about we (the political body) are moving in an entirely different direction. Two bills were killed in the environmental protection committee simply because they had the eminent domain situation, where the county could go move in and take over in any township or anywhere else a landfill site. And there was enough complaint on that particular issue to knock those bills out. But sooner or later, something's going to be developing along those lines and this is where the real conflict is going to come in and this is where you have to have a line of demarcation and say, this is what the county's going to do from now on - this is what the villages and townships are going to do.

Mr. Weikel: To solve these problems, they could be handled by the local government if they chose to do it, if they found that it could be done there. If not, then it would go to the county government. On the sewage question, we already in Cincinnati and Hamilton County have a metropolitan sewer district which takes in the entire thing. I think reasonable men can solve these problems if we're given the tools that we're asking for.

Mr. Speck: How about a sanitary code?

Mr. Rhoades: Why can't we have the same sanitary code that the city of Parma has? Or any city? I have no objection to a state delegating authority to the county if it delegates the authority to the county that's everywhere. It doesn't stop at the limits of the city of Cincinnati just because they're big.

Mr. Hummell: I think Doctor Speck's question has not been answered directly. In the event of conflict between home rule with county and township. Assume now that the counties had the home rule that you recommended here - assume also that there was a conflict between that and the municipalities. Then the municipality would prevail. The counties' home rule would go only to those areas that did not now enjoy home rule. And getting back to the very good question that Mr. Russo raised, I think we see here that the state is getting into fields that they wouldn't have gotten into 10 or 20 years ago. The federal government is getting into fields that we never thought they'd get into. We're going to see more and more of this higher

levels of government getting into governmental services - but not powers - and that's where I'd make that distinction.

Mr. Speck: Are the commissioners saying to us then that they would be happy to relinquish home rule powers in any township which exercised home rule powers?

Mr. Hummell: They wouldn't have any jurisdiction, for example, in the city of Columbus, speaking of Franklin County. There is a municipality in this county that has fewer than 200 people - the little community of Bryce - they wouldn't have any jurisdiction there. And under our proposal which would make home rule permissive with townships, only upon a vote of the people and only if they had 5,000 or more people, for example, if 3 townships out of the 14 in this county voted for home rule then they would not have any more jurisdiction in those three townships than they would have in the city of Columbus. And I don't think that detracts from the county whatever. They certainly have enough to do taking care of the remainder of the county and legislating for it, omitting the home rule municipalities and the home rule townships.

Mr. Speck: Except that you could not conceivably compare the capacity of townships to provide services under home rule where they have to operate on some economy of scale - where you have a couple of urban townships and the rest are small rural townships.

Mr. Sponseller: Some of that can come into direct conflicts between trustees and commissioners and you can see those sort of problems arise. I think there has to be a time between the handing of home rule powers to counties and home rule powers to townships - some interim time that gives the time for the county, which is now a broader base, to make some regulations before the township can supercede them.

Ms. Cave: I really have just one comment. You want to create units of government at the local level - call them townships or whatever - but what you're doing is you're just creating more municipalities and calling them townships. I thought we didn't want to do that any more. I thought that was the reason for the incorporation laws and the 3 mile limits. I thought we didn't want to create any more municipalities, townships, whatever you want to call them, with these home rule powers.

Mr. Weikel: The Municipal League in Hamilton County which is very active wrote a letter to our association, saying in effect, that if we don't live together we're going to die separately. Please appoint a committee to work with the committee from our organization so that we can have mutual understanding and mutual cooperation for mutual problems. We had already appointed three members and I understand that they're in the process of doing the same thing. They understand that there are mutual problems and it's my understanding that we may be having a marriage of convenience very shortly at our level - I think this would be statewide too. I believe it's an encouraging trend and one that we're going to work very tirelessly on.

Mr. Rhoades: May I suggest that it doesn't make any sense, though, to freeze the status quo. If we were to incorporate tomorrow, we'd be larger than all but 2 of 37. You can't just close your eyes and say that everything is going to remain locked the way it is right now when you've got cities as small as 638 people with home rule power and townships with as many as 50,000 without, and no way to get it short of being swallowed up that they don't want to be swallowed up by. I would object to, for example, the county moving in and making some local decisions for

us before we got the authority to. We've got three Republican commissioners - we've got a township that generally elects Democrats.

Mr. Weikel: This is where Mr. Rhoades and I cross, because I believe the township level is more to keep politics out of it.

Mr. Russo: The could ask for proportional representation in a county charter.

Mr. Rhoades: The proportional representation still means that the people in Cincinnati still have a voice in electing the guys who make our local laws. No matter if they all live in Delhi. They've got to get 50% of their vote from the cities and that blows it right there.

Mr. McFarland: The problem in the commissioner's office is the problem where the law is silent. We are mandated or given authority to do certain things yet it's impossible, just a limited amount of ordinance making powers would enable us to clean up those situations, and make it possible to administer.

Mr. Russo: I've always supported that concept.

Mr. McFarland: It's obvious that the people of Ohio are not ready to accept and I'm not sure I blame them the charter form or the alternate form. I think those sections are going to have to be cleaned up before the people will accept them. So we're particularly interested today in being able to give some of the services that we were already mandated to give and yet the law is silent. The attorney general has ruled that when a law says nothing you can't do anything.

Mr. Fry: If you don't get together the legislature's going to keep giving you more responsibility with more expenses. I voted against a lot of it and opposed a lot more.

Mr. Speck: If the Constitutional Revision Commission recommends in essence home rule powers and having a vote in terms of ordinance-making and in terms of charter opportunity - this kind of thing, what's going to be the position of the township trustees on the area of the county wide option on a straight majority vote for the charter form of government? In other words, if we recommend the option of home rule for townships, what kind of a position would you anticipate your association's going to take in respect to the charter option for counties for a charter in a simple majority vote?

Mr. Hummell: I would anticipate, my uneducated guess would be, that we would not oppose that if the home rule power for townships were on the same basis as municipalities on the question of fitting it in with the counties.

Mr. Speck: I've got some letters from constituents in which this issue of the power of municipalities to remove themselves from townships and the power of the townships to remove municipalities is raised. Is this a problem we need to look at?

Mr. Hummell: There is statutory authority for both. As a practical matter, statutory authority for a municipality to establish its own internal township with the boundaries coextensive is the one that's most commonly used. Very rarely is the other statutory device used where the township creates a new township excluding the municipality. From what correspondence I've had and discussion, I'd say there is very little need, if anything, for anything additional in that area.

Mr. Carson: Can I throw out a proposition in front of everybody here that was suggested at one of the recent meetings of this committee? To see what the gentlemen here might say about it. This would be an attempt to force an issue in various counties of the state on upgrading or modernizing their forms of government. The proposal would go something like this - I'll just throw it out and you can think about the possibilities. Let's say the state constitution would require, perhaps two years after the amendment were put in the constitution, a vote to be taken in each county of the state, and the issue before the electorate at that vote would be "Shall a county charter commission be appointed?", to look at our county government and see whether a charter should be adopted in this county. Maybe this could be restricted to counties of a certain size. Let's assume the issue is answered yes by the voters, the provision of the constitution will then say that the charter commission in Hamilton County will have 2 or 3 years to attempt to put together a charter and go back to the voters with the charter. If a charter is adopted, then presumably the issue has been settled in Hamilton County. If, however, the original charter commission goes down, or the commission that's appointed doesn't come up with a charter within 2 or 3 years, then a second issue goes on the ballot in that county which would be "Shall all townships of a certain size be given home rule powers?"

Mr. Rhoades: And everybody in the county gets to vote on it?

Mr. Carson: No, I think it's by township on the second vote.

Mr. Rhoades: Then it would be in our interest to fight the county charter going in and try to whip up the sentiment against it which we hate to do.

Mr. Sponseller: I'd like to speak to that, make all the township trustees mad. And that is the fact that they're going to defeat the county proposal because they're going to want to get power themselves.

Mr. Carson: Understand that it takes a simple majority vote in the county.

Mr. Sponseller: I understand, but it's going to be defeated. What does the general assembly of the state of Ohio look to as the most responsible piece of local government? Do they look to the county as the most responsible or do they look to the townships? And which tool is the best tool to use?

Mr. Weikel: Mr. Chairman, may I say that we can all go home very happy perhaps with the exception of the Municipal League, if S.B. 220 was amended to give township trustees the same authority that the county commissioners would have under the proposal. I would think that we could have the tools that we sorely need and you need and I would think that the association would give support to that.

Mr. Fry: Just a few more words on what Mr. Carson brought up. The idea would be that if you did it statewide instead of, as you say, in a particular county - where they work on it and it goes down, - it would focus attention of a lot more people of the state and of each county on it. Hopefully, it would make people realize the importance of their local government. And in doing so, come up with some definitive ideas of what they want to do. I don't see any reason for the township trustees not to go along with the idea of charter powers if in those charter powers the trustees have the rights. You see, you can have a charter commission of the county or in the townships, and you'll have certain things that you're looking at.

Mr. Hummell: I think the charter could be worked out so that it would be satisfactory to us.



Mr. Russo: It depends on the kind of charter that you're talking about.

Mr. Fry: Right, but it's the idea of making people focus all over the state - you'll have the editorial writers across the state, hopefully, and the political parties and the groups that are ordinarily interested in good government saying, "Let's take a look now at local government" and all the things you've been saying about it being the most responsive, it being the most economical level of government and so on can be said, and I think you might overcome what has defeated other attempts at charter for counties because they never get the right amount of publicity and a lot of people say that if you get more governments you're going to have more taxes and a lot of things like that.

Mr. Speck: What you need to do is to make the one contingent on the other. If the people vote for county charter provisions this then opens the door to township home rule.

Mr. Russo: You can't have the two live together with home rule powers because in the final analysis the county has got to come out on top.

Mr. Fry: I think you'll find in the long run that your common interests will make it worthwhile looking at.

Mr. Carson: Let's say this commission came up with a recommendation that would eliminate the present barriers to incorporation in unincorporated areas. Take the 3-mile limit out of the law through a constitutional amendment. Do you think the townships would try to incorporate?

Mr. Hummell: I don't know.

Mrs. Eriksson: Along the same line, Mr. Weikel made a statement that the people expressed a preference for township government, but I wondered what the basis for that statement was? This has to do with the incorporation question.

Mr. Weikel: This has come up to us particularly vivid in police powers and in township zoning. We created our own police department in Springfield township because the people said they preferred it. We created some areas of township zoning because they expressed a desire to leave the county zoning, and this is what I was basing it on.

Mrs. Eriksson: But if you were a city, if you incorporated, you would presumably have these powers.

Mr. Weikel: But right now that is impossible to do.

Mrs. Eriksson: But Nolan is saying if the 3-mile limit is removed...

Mr. Weikel: I'm not prepared to comment at this time.

Mr. Hummell: I think we have to be practical. I think it would be impossible to get the repeal of that provision to the legislature.

Mrs. Eriksson: Mr. Hummell, when you are speaking of the people voting in the townships for a charter and this would then permit them to acquire certain powers, you're speaking of some kind of a separate charter as a township and not as a municipal corporation, is that correct?

Mr. Hummell: That's right, and I'll come back to what Mr. Weikel says. If we used something like the vehicle of Senate Bill 220 which I assume you're familiar with, which is a statutory grant of authority to the county commissioners, somewhat limited, we would be satisfied to tie into that, not for every township, not for 1320 townships, but for only those townships that have, say, more than 5,000 and then only if they vote for it. So we're going to have less than 10% of the townships that are even eligible and then you're going to have to say to the people in those townships, "Do you even want it?" And they're going to have to vote yes. So it might be that we never have a one. This leaves it with the people and it certainly does not encroach upon the board of county commissioners in any way. And to get back to one of Mr. Speck's apprehensions, if the township does vote for it, I see no conflict between that county and that township any more than there is between that county and, say, Cambridge or Cincinnati.

Mrs. Eriksson: But that would not be a charter in the sense of changing structure of the township at all.

Mr. Hummell: No, but we have to work this changes of structure in it, because a three member board just doesn't lend itself to ordinance-making powers.

Mrs. Eriksson: One of the examples you gave, Mr. Weikel, was the solicitation. You said that the people around you can require registration, and I assume that you're talking about cities and villages.

Mr. Weikel: Yes, I'm surrounded, in my area we have the city of Cincinnati bounding me on the south. And on my west, I have the city of North College Hill and then right in the heart of the township I have Mt. Healthy, Green Hills, on my west the city of Forest Park then Wyoming. We have many many areas that did incorporate in the township when it was possible to incorporate. So these areas surrounding our big area already have these solicitation requirements on their books. But we're still close by, and this is what's bringing this influx of peddlers into the area.

Mrs. Eriksson: You are saying that what you would need is statutory authority to require registration?

Mr. Weikel: Yes.

Mrs. Eriksson: If the county had that authority to enact an ordinance to require registration and even with the cities and villages requiring registration, then this would apply to all unincorporated areas.

Mr. Weikel: But the problem with that would be that what may be the problem in Anderson township or Delhi might not be what I'd like to put in my area. They have no cities surrounding Delhi so it would be a little bit different. I think we have to have the right, if we can get it, to put in what is the need of our particular community. It would be better than nothing. Our policemen are enforcing state statutes, but our problem is that by the time our policemen get to this location, we have a license number, but they're operating on a rented car, or on an Alabama license poate or a Michigan plate, and we have no way to check out what their local address is because they're gone from the immediate vicinity of the complaint. Whereas, if they had moved to a different area in the township and yet I knew that they were operating out of 915 Vine Street, I could go to 915 Vine Street, bring the fellow in and say "Is this the man that made the

threatening remarks?" Take them down there and get an identification, because these operations are a week or two at the most and then they're in a different area. They go state to state, city to city, and this is what concerns us on the solicitation. This is what unfortunately was misunderstood by Avon or the Green Rivers type thing. We didn't want that. All we wanted to do is for them to tell me where they're at, and if I get a complaint, I could find them. We sincerely thank you for the opportunity for coming and speaking to you.

Mr. Carson thanked all the participants, and the meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
July 8, 1974

### Summary

The Local Government Committee met at 2:30 p.m. on July 8, 1974 in the Commission offices in the Neil House. Present were Chairman Orfirer, Representative Fry and Mr. Heminger; Ed Loewe of the Ohio Chamber of Commerce, Ms. Sue Cave of the Ohio Municipal League, Mrs. Lois Mills of the League of Women Voters and Ann Eriksson, director of the Commission.

Mr. Loewe - Will any of these township items be set for public hearing on the part of the committee, or would it be the full Commission?

Mrs. Orfirer - On the part of the full Commission. We have really what amounts to public hearings within the committee.

Mrs. Orfirer - Let us begin with the initiative and referendum draft. What we have done is to give the people in the counties the same rights of the initiative and referendum that those in cities have. We are advocating placing it in the new Article that the Elections and Suffrage Committee is proposing for all of the initiative and referendum proposals. It speaks of the matters which the municipality or county may now or hereafter be authorized so that it doesn't matter whether our county proposals pass in terms of this initiative and referendum. What it does now is something which has not been done before. Presently the counties are not subject to initiative and referendum for anything that they may have the power to do but we didn't see any reason why they shouldn't be subject in the same way as cities are. I don't think it's going to be too much burden or hardship on any one.

Mrs. Eriksson - There's one other thing that I think maybe should be noted and that is the fact that it does specifically refer to charter provisions, which the present section does not. In other words, it specifically permits the procedures to be provided by charter, either a city charter or county charter as the case may be. Court suits have been brought on whether the charter can vary from the statutes, so that the intent of this is to make clear that a charter can vary.

Mr. Loewe - This means that if you have an alternate form you do not receive the initiative and referendum powers.

Mrs. Eriksson - Yes, you do. Then it would have to follow the statute and the General Assembly will have to enact a statute providing for county initiative. Not now except in some cases, for instance the permissive taxes, there's a provision for a referendum.

Mr. Heminger - I will move that the committee recommend this to the full Commission.  
Mr. Fry seconded the motion.  
The section was agreed to.

Mrs. Orfirer - Gene had recommended the word "right" instead of "power." It is one way one place in the Constitution and the other way in the other place. This went out to all committee members and we received no criticism. Can this be raised at the Commission meeting, along with the other Elections and Suffrage proposals?

Mrs. Eriksson - Yes, if we get it out right away, so that it is at least seven days in advance of the meeting if there's going to be a vote on it. The public hearing can be at the same time the Commission votes on it. The Municipal League is the

organization that would be most concerned with it, because the present section only applies to cities. I'll notify the county and township people and if they want to appear and be heard they can.

Mrs. Orfirer - As you are all aware, we have spent several sessions and months delving into this problem of what needs to be done about townships, and as I have re-read all of the minutes I feel we have been going around and around on how to solve this. I have tried to map out areas where we might be able to reach agreement. It would seem to me the place to start was with some of the objectives and then how you best attain those objectives.

One of the primary questions is, do we want a third level of government with home rule powers? In counties, cities and townships? If this a goal that ought to be encouraged? Or doesn't it matter? Is it redundant or would we be creating municipalities under another name called urban townships? This seems to be the basic question.

Mr. Fry - I think there's another alternative too and that's whether or not we want to let the people in that particular township or county determine whether they want that third level of government.

Mrs. Orfirer - Except that I think it is broader. It affects the whole state.

Mr. Fry - If we were to give them the opportunity to say yes, we do think we have problems in our particular county that require township government so this is the third alternative in addition to the two that you have mentioned. You do have it, you don't have it or you let the people in the county say we want it or we don't want it.

Mrs. Orfirer - My problem with that, Charlie, is that it doesn't affect only the people in the township or county. It really affects the whole state. Do we want to further annexation? There are certain corollaries that go with the answer to this. An obvious one is if we want to further annexation then we don't give home rule power or encourage incorporation. We don't get rid of the three mile limit which works against the tendency to annex. A lot of the argument that we have gotten is that we can't incorporate because of this three mile limit. At our meeting with the township people, Mr. Weikel made a statement that the people expressed a preference for township government. What is the basis for that statement? Mr. Weikel answered and says this has come up in the fields of police powers and township zoning. "We created our own police department in Springfield Township because the people said they preferred it. We created some areas of township zoning because they expressed a desire to leave the county zoning and this is what I was basing it on." "If you were incorporated you would presumably have these powers," Mr. Weikel, "but right now that is impossible to do." "Mrs. Erikson - But Nolan is saying that if the three mile limit is removed"

Mr. Weikel - I am not prepared to comment on that."

They do have this opportunity to get whatever powers they think they want, if they can incorporate. There are certain things that go along with it that the township people apparently don't want. I can understand their desire to maintain their own identity. I dread the idea of building things into the Constitution that are going to make it impossible or very difficult for a county-wide government to evolve. This is why we gave up our regional suggestions hoping that as we strengthened the

counties that they would begin to fulfill this role and then the counties might combine into the regional form. We have not given the opportunity for the county proposals to work before, and do not know whether there are these problems, to see whether these problems are going to exist or not, or whether they will be sufficiently resolved by strengthening the county.

I do have one suggestion to make. We're all aware that there are problems in the urban townships and frankly I think that some statement about townships belongs in the Constitution. It describes a level of government and I don't know what a constitution is for, if not to describe levels of government like this. What one township people think they want is home rule power. They want not only the home rule power but they want precedence in case of a conflict with the counties. I think they want the best of two worlds. That's all right with me if it doesn't disrupt other things, but I think it does and it seems to me that people toss phrases around without really thinking what they mean. I reread those minutes and I kept hearing "We want home rule power." "We want precedence over the county in case of conflict." But what do they really want? It seems to me that there ought to be some way without the whole scope of home rule powers and precedence in case of conflict, that this can be accomplished. Now I don't know what that way is. I spoke to Gene about it and he said I don't know how you have limited home rule.

Mr. Fry - I think one thing more that might be said at that point. I don't think that the three township trustees that appeared at this meeting were necessarily representative of township trustees across the state. I don't think that the township trustees have the same political impact that they did 8 or 10 years ago. I feel that if the people in a county are given the opportunity to express themselves, there's not going to be people rising up and saying "we want to keep our township trustees."

Mrs. Orfirer - Would you take Draft #2? It seems to me that this draft comes the closest by going with what I suggested, which is to give urban townships the powers they need. In the fourth sentence "No alternative form shall become operative in any township until submitted to the electors thereof and approved by a majority of those voting thereon. An urban township which adopts an alternative form may except as limited by general law, adopt and enforce within the limits of the unincorporated territory of the township" . . . . then you pick up the municipal wording "as are not at variance with the general law and in conflict with the exercise by the county of any power authorized by this Constitution or by law." So they can't be at variance with the general law and will not have preference over the county or the municipality. It would apply to the few urban townships and they would have to vote on it. So we're limiting it down to where it's needed. I have a further suggestion. My thought would be to insert a sentence before "No alternative form" along these lines-- "No alternative form shall be submitted to the electors of said townships until or unless proposals for incorporation and proposals for annexation have previously been submitted and failed." These proposals would be submitted by action of the trustees or by initiative petition. This forces on the ballot "Do you want to be annexed, do you want to incorporate?" If neither of these, then you have the choice of voting on this alternative form with home rule powers that do not conflict. I didn't think it was fair to put an "either/or do you want to incorporate or annex?" It would have to be a separate kind of vote and I think it should be left up to the legislature as to how they want to work this out except that they might put in that it could be submitted on the ballot by the township trustees or by petition.

Mr. Fry - What is the three-mile limit?



Mrs. Eriksson - It provides that within three miles of the boundary of a city or village you cannot incorporate if the city council objects. The city council has, in effect, a veto power over incorporations within three miles of the city boundaries. This new language would not change that. If the people in the township did vote to incorporate the city could still veto it.

Mrs. Orfirer - And with annexation, if the township votes to annex to a city, the city doesn't have to accept them if they don't want to

Mr. Fry - The cities usually want annexation but they don't want separate corporations. I don't know of any area where there was a desire on the part of a group wanting to incorporate. I would guess that the city is going to object to it unless they could see more problems than they can see revenues, or something.

Mrs. Orfirer - We asked this question, whether there had been any turndowns and nobody could come up with any.

Mrs. Eriksson - There haven't been any incorporations or very, very few since the law was passed.

Mrs. Orfirer - They've been annexing rather than incorporating.

Mrs. Eriksson - I don't know any that have tried to incorporate, and I don't know if it has ever gotten as far as the city vetoing it.

Mr. Neminger - How old is that statute?

Mrs. Orfirer - 1967 or 1968.

Mrs. Eriksson - It is conceivable that some of the townships might not be contiguous to a municipal corporation and there might not be anybody to annex to. If not contiguous, the question of annexation would not be proper.

Mrs. Orfirer - I'll read my language again. And then I would go on to add a sentence that such proposals can be submitted by the township trustees or by initiative petition. I just think we need some modifying words in relation to the proposals for annexation where applicable. If the people in that township have turned down the opportunity to incorporate or to be annexed they then have the right to vote to accept this alternative form. I feel that in the Constitution the usual remedy is to use the remedies that are now at hand. There are two at hand and I think that if we don't want to ram it down their throats and if they are really truly unhappy, if the people don't want it, this provides an opportunity to find out. They'll have the opportunity to decide how they want it.

Mr. Fry - I don't see anything wrong with that approach. Most people feel that there are areas where township government is not needed but they may have urban townships where they do need it. They probably do have areas where they need additional powers right now. The people who came to our hearing, they need some sort of approach to handle these problems. I don't find anything bad about that approach. What I want is to give the people an opportunity--does every county need township government? Let's deal with the pobelsm of the urban townships first.

Mr. Neminger - I think that's a valid approach.

Mrs. Eriksson - Although not inherent in the draft itself, I think it should depend upon the adoption of the county power section. That would be a separate section. One of my objectives in this draft was to make it clear here that if the county exercised the power and I have in mind here the home rule powers. It seems to me that this must be presented to be dependent upon that section. I think that ought to be stated, but I am just now sure how that ought to be done but it has to be one proposal on the ballot or it has to be a series of proposals so if that one fails this one would not.

Mrs. Orfirer - We have a tentative agreement on this and would like to see a final draft.

Mr. Loewe - Does this apply to the turndown within the three-mile limit or does it also apply to a turndown by the voters of the township to incorporate?

Mrs. Eriksson - If the township electors vote to incorporate but the city says "no you can't" then the township could go ahead and adopt an alternative form and acquire these powers. That's the concept. The city could still reject the incorporation. The townships could not acquire the powers until it had opted for incorporation, and was rejected by the city or by itself.

Mrs. Orfirer - If the city turns them down, they have done all they could and then they're entitled to take this alternative form.

Mrs. Mills - Is there some sort of time limit?

Mrs. Eriksson - You mean if they voted against incorporation and then adopted an alternative form and acquired home rule powers, they would not have been rejecting the idea of incorporating at some future time?

Mrs. Orfirer - If I understand you, supposing that they try and fail on the incorporation then they're entitled to move ahead to the alternative form but they don't take that step of putting it on the ballot and they put it on the ballot 10 years later.

Mrs. Eriksson - I don't know why not.

Mr. Loewe - They might fail to achieve it and might try again five or ten years later and they might achieve it at that time.

Mrs. Eriksson - Let's say you had a township that met the standard for urban townships and then something happened to industry and it no longer met whatever standards the General Assembly set up then it would no longer be able to adopt the alternative form anyway. This depends on the General Assembly defining an urban township.

Mr. Fry - Is there any way we could tie the standards for urban townships into the standards for cities and villages?

Mrs. Eriksson - The problem with defining the urban township is that the standards for cities and villages for incorporation are set by the General Assembly. The only thing the Constitution says is that the difference between a city and village is that one is over 5,000.

Mrs. Orfirer - The General Assembly can change the standards for incorporation.

If they did that, I would think, Charlie, that they would just use the same kind of formula.

Mrs. Eriksson - Everybody has a different idea of just what an urban township is. That's why I found it difficult to try to write it into the Constitution. The definition of urban townships in the original civil service bill was a township of 25,000 or more which has a police and fire department of 10 or more full-time paid employees. That definition may have been modified before passage.

Mr. Heminger - They used the phrase "urban township" in that bill?

Mrs. Eriksson - Yes.

Mrs. Orfirer - I think this is something that may work for us. Now let us talk about Mr. Fry's idea of getting rid of rural townships.

Mr. Fry - I don't want to get rid of them. I just want the people to face up to and make their own decisions. This idea of putting in the Constitution a mandated vote I'm not very comfortable with. I don't think you can put something in the Constitution like that. I don't know where there's any place in the Constitution where they have to have a vote on such and such a day but I would like, in the

counties across the state, to have an answer to that question

Mrs. Eriksson - I would hesitate to say that it would be a good idea to put it in the Constitution. But you might be interested in something that came up at that last meeting, the statement that in Illinois the new constitution provides for a vote on retaining townships so I checked that out and the situation in Illinois is interesting. The new constitution does indeed contain something very similar to what you're talking about. It's not in the terms of a statewide vote in every county. And I'll read you the provision in the new constitution in Illinois. It says "The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged and one or more townships may be divided when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected." I thought that was interesting because it is somewhat similar to what you're talking about. It's part of the Local Government Chapter in the Illinois Constitution. However, in going back, we discovered that in Illinois the prior constitution had had a very similar provision and this was not very much different from the prior provision. And, moreover, in Illinois apparently traditionally townships have always been viewed as a unit of county government, not as a general unit of local government. The old constitution did say that the General Assembly shall provide by law for township organization under which any county may organize whenever a majority of the legal voters in the county choose to do so. So I think this is quite a different concept. Apparently the townships were not the original unit of local government, that they have been traditionally in Ohio, and it does seem to arise from a completely different kind of tradition than Ohio does. Now Mr. Hummell made the statement that they had a number of referendum votes and that nobody had voted away townships in Illinois which may very well be true. I wasn't able to check that out, but apparently this has been possible over the years, for this kind of thing to be done--that counties can either organize in townships and they can get rid of the townships by a vote of the people when they no longer serve a purpose.

And basically all this provision in the new constitution did was to shorten and get rid of some of the detail in the old constitution, about managing the fiscal affairs of the county and they apparently had some tradition of doing it that way. So I think there is a difference between what has traditionally been the case in Illinois and that in Ohio. But if you want to look at the specific language, it does contain a provision that you might want to talk about--all the townships in a county may be dissolved when approved by a referendum in the total area in which the township officers are elected. And that is intended to be what we would call the unincorporated area, so that you would not be voting in the city which no longer participated in township affairs. That was put in to take care of Chicago, which is still technically in a township, in which they do not vote for township officers any more. That last sentence is of interest.

Mrs. Orfirer - What does it really mean? All townships throughout the county in which township officers are elected. Does it mean the township or the county?

Mrs. Eriksson - No, it means throughout the county. What they mean is that in a county you can have townships or no townships.

Mr. Fry - In other words, let's take Clark County. Take out the cities we have all the ones who vote for township trustees would have a question on the ballot--shall township government in Clark County be continued?

Mrs. Orfirer - In Cuyahoga County where we do have two or three townships, they would be the only ones that would vote on it.

Mrs. Eriksson - We would say in the entire unincorporated area of the county.

Mr. Fry - At least it gives the local people a tool if they want to take it to the ballot.

Mrs. Eriksson - This doesn't say you put it on the ballot statewide, the way your original concept was. This is simply a provision in the Constitution.

Mr. Fry - I just wanted everyone to face up to it.

Mrs. Orfirer - Let me ask--would you need a second sentence which spells out what happens if they vote to dissolve?

Mrs. Eriksson - In Illinois they don't because it's obvious that if they do dissolve the county takes over. I think you would need a second sentence, because you have to provide for a transfer of those powers since the powers are derived in Ohio from the General Assembly not from the county. Nolan is still interested in this question of the statewide vote on the county charter question, but not with the idea of dissolving townships. It's basically the same as you received in the mail except that we did limit it to counties with population of 200,000 or more. It would go on the ballot every ten years.

Mr. Fry - If you're going to put it in, why don't you make it at the next general election in the even year, if you want to, after adoption of this section? Can you have any provisions that are self-destroying after a time?

Mrs. Eriksson - If you're going to say "every ten years thereafter" you definitely

would want to put that in the Constitution. I question putting anything in the Constitution saying that you're going to mandate putting a certain question on the ballot in a certain time, although the question of calling a constitutional convention every 20 years is mandated. If you are interested in pursuing something like the Illinois language, I think that could be attached to section 2, as part of the general provisions on townships. If you wanted to put in something like giving an option for townships to be dissolved then there's a vote in the unincorporated areas that could also be done then by petition of the people or by the township trustees if they should ever want to put such a question on the ballot.

Mrs. Orfirer - I'm afraid that if there's any thought of dissolving townships, it may raise the hackles.

Mrs. Eriksson - It could be a separate section. It really involves both the county and the townships.

Mr. Fry - I don't like to see the mandated county charter question in the Constitution. Maybe the way to do it is simply adoption of a resolution that is independent of constitutional revision, just a legislative resolution.

Mrs. Eriksson - I would like to distribute to you Nolan's local option for township home rule. He also gives the county home rule precedence over townships and he also said he would make it dependent upon the county powers section. But it does not have the same concept of an alternative form.

Mrs. Orfirer - I would like to handle this the way we have handled every other section. Unless there is dissent, we will adopt the draft #2 as modified by our discussion today.

Mrs. Mills - I would like to make one comment about Draft #2. Is it really necessary to put all that in the Constitution? Can't the General Assembly right now accomplish what this says?

Mrs. Orfirer - This is an argument that we have gone through many times. When we feel that something is as serious and basic enough then we have decided as a committee and a Commission to put it in the Constitution even though the General Assembly may have the right to do it.

Mrs. Eriksson - There is some question as to whether the General Assembly could classify townships, which is one reason for putting it in the Constitution.

Mrs. Orfirer - Another reason is that we feel that the provisions in the Constitution as they relate to townships now are very unsatisfactory.

Mr. Fry - I think we're taking care of both sides, the townships trustees who feel they need more powers and those who do not.

Mrs. Eriksson - The urban townships are still going to have to go to the General Assembly before they will acquire anything, under this provision for a definition of urban township and an alternative form of government.

Mrs. Orfirer - Are you all aware that the indirect debt limit is going to come up for a vote at the next Commission meeting? Unfortunately I shall not be able to attend but Nolan is going to present that.

Mrs. Eriksson - It will just be up for discussion and a public hearing. We never did dispose of section 14 of Article XVIII. Section 14 says "All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election." My concern was that if we put initiative and referendum in here, it might be subject to change. I know of no reason now to change that section at all, unless somebody has problems with it. The petitions being talked about here will only be the charter and charter amendment petitions, which have already been discussed.

Mrs. Orfirer - Then we're ready to go ahead with our proposals to the full Commission on municipalities and townships in September or whenever you can get it on the agenda.

Mrs. Eriksson - We will draft a provision similar to this last sentence from Illinois which will say that townships in a county may be dissolved upon petition of so many electors in the townships or the township trustees, not in any mandated statewide election.

Mrs. Orfirer - I think we have about finished our work as the Local Government Committee. We are reserving the right to go back and discuss regionalism when we see whether the county provisions are adopted and how they work since we still have another six years of life as a Commission. We reserve the right to come back and look at those drafts we did originally.

The meeting was adjourned.



Summary

The committee met in the Commission offices at noon on November 26. Present were members Mrs. Orfirer, Mr. Carson, Mr. Wilson, Representatives Fry and Speck and Mr. Heminger. Mr. Carter also attended. Present from the staff was Mrs. Eriksson.

Mrs. Orfirer opened the discussion about the rereferral of Section 10 of Article XVIII by the Commission to the committee. She noted that the section did not permit condemnation in excess of that needed for the public use, and that repeal of the section would open up a great deal of litigation. Therefore, Mr. Kramer's recommendation is, as before, to leave the section unchanged. She read some language proposed by Mrs. Eriksson. The present Constitution reads: "A municipaity appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement," and the proposal would add the words "WHICH EXCESS IS NEEDED FOR A PUBLIC PURPOSE," and then it goes on "and may sell such excess with such restrictions as are appropriate to preserve the improvement made." She noted that some Commission members objected to the idea of "excess" condemnation.

Mr. Wilson - If it's needed, is it excess?

Mrs. Orfirer - It seems to me that the problem is that people aren't reading the whole thing. They balk at the word "excess" but don't realize it is "excess over that actually to be occupied by the improvement." It's not excess beyond that needed for a public purpose. It's only excess beyond that actually to be occupied.

Mr. Carter - Paul Gillmor and others expressed the concern at the Commission meeting, and I became one of the number, that municipalities using the extraordinary measure of appropriation should not be permitted to take any more than immediately required. They can negotiate and buy, but should not use eminent domain.

Mrs. Orfirer - The concern was the protection of private property and that the government should not be able to step in and take anything in excess. Unfortunately, in our report and explanation, we got into the thinking of the 1912 convention when this was added to the Constitution. At that time, they thought this would be used as a means of raising revenue. You sell it after you've made the improvement and with restrictions, and in that way you would help to pay for the improvement. That use of the section was ruled unconstitutional. Moreover, the language doesn't say that--if that was the intent of the 1912 drafters they didn't express it in the constitutional language. But this is what lurked in the backs of their minds.

Mr. Carter - The feeling expressed by Commission members was that, even though the courts have ruled this unconstitutional, we cannot support an idea which we feel is wrong.

Mrs. Orfirer - Gene's point was that the language does not say that. It does not express the thinking of the people who wrote it.

Mr. Heminger - The word "excess" implies something more than is readlly needed.

Mr. Carson - What is an example of something excess?

Mrs. Orfirer - Ground around a building, half a building, half a plant where you would still need to take it all, parking purposes.

Mrs. Eriksson - In the East Cleveland case, the city tried to appropriate property for street improvement--much more than they needed-- and then they were going to sell that excess property and expected that it would increase in value because of the street improvement. The court held that was unconstitutional. But if you read the language literally, you would reach that conclusion anyway. I don't think you can take anything that is "excess" because the eminent domain powers of the state would not permit that. Section 19 of Article I would not permit a municipality's right to rise higher than that of the state itself. Section 19 says that private property is subservient to the public welfare, and you have to establish public welfare or public use before any governmental entity can take property by appropriation.

Mrs. Orfirer - One of the problems is that this section was cited in the court case upholding urban renewal. And this is one reason there is reluctance to recommend repeal.

Mrs. Eriksson - The Municipal League opposed repealing for this reason.

Mr. Carson - The state has no such power as this, is that correct? For highway appropriations, they cannot do this.

Mrs. Eriksson - The state cannot take more than needed for a public use, and neither can the city, under this provision.

Mr. Speck - Why not just eliminate those words excess?

Mrs. Eriksson - In urban renewal, the proposition is that the city condemns and takes a plot of ground and then does ultimately sell it to private developers for private purposes so that the public does not occupy that property. There may be some public buildings, but not the entire property. The concern is that if you remove that language and the language permitting the selling of the excess you might be doing something adverse to urban renewal.

Mr. Carson - There is no constitutional provision specifically authorizing urban renewal?

Mrs. Eriksson - No. The court had really reached the conclusion that urban renewal is a proper public purpose by simply discussing eminent domain power--most of the decision is based on Section 19 of Article I, with the court finding that urban renewal was a proper public purpose under that section and therefore land could be appropriated by a city for that purpose. Then, after that conclusion had been reached the court cited this section as reinforcement for that conclusion. There is no specific reference in the Constitution to urban renewal.

Mr. Wilson - There is one other possible example. If you have to take property to put in a sewer line, you might want to take the whole property even though only a small portion is needed for the sewer line and then sell off the excess.

Mr. Speck - Can't you appropriate an easement?

Mr. Carson - You can appropriate an easement. The highway department does it all the time.

Mrs. Eriksson - I suppose there might be circumstances where you would appropriate the whole thing if the easement renders the remaining property unuseable.

Mrs. Orfirer - We're not recommending any change in this. It's there and has been ruled upon. It is apparently incapable constitutionally of being used as intended.

Mr. Speck - You are relying on a court decision for that.

Mrs. Orfirer - But also relying on other provisions of both the federal and the state constitutions. My feeling is that by leaving it alone we are not doing anything that endangers the rights of private property.

Mr. Carter - What's the problem with changing it?

Mrs. Orfirer - Every time you make a change it should be for a purpose. What kind of power are you adding or withdrawing? That's what people will look for.

Mr. Carter - This proposed language makes it clear that you can't take private property unless for a public purpose.

Mr. Carson - Rather than putting that new clause in where suggested, how about "and may sell such excess when it is no longer needed for a public purpose"?

Mrs. Orfirer - I think that is different. We are saying you may not acquire excess which is not needed for a public purpose, and you are saying you can sell it when no longer needed.

Mr. Carson - But if you read the language, it already says that you may only acquire property for a public use. I'm just suggesting that the language be inserted following the language about sale of the excess "when it is no longer needed for a public purpose." It would mean to me that the excess had to be for a public purpose in the first place.

Mrs. Eriksson - I think you might still run into objections as far as the urban renewal situation is concerned because there the concept is that it is needed for the public purpose and part of the public purpose is served by the selling. It is not a question of no longer being needed, but you are serving the public purpose by selling the excess. The court, in upholding urban renewal, said that the fact that the property was not even intended to be occupied by the public did not make it not a public purpose. If the "no longer needed" language is inserted, it might raise the question as to whether it was a public purpose to begin with.

Mrs. Orfirer - The idea of urban renewal is a public purpose itself.

Mrs. Eriksson - The court had difficulty reaching this conclusion because Section 19 uses the words "public use."

Mr. Carson - Does this power vary from the state's power?

Mrs. Eriksson - Not in my opinion.

Mr. Carson - Would there be a possibility of repealing this section and writing in the Constitution a provision that the power of eminent domain as given to the state applies to municipalities?

Mr. Wilson - No.

Mr. Speck - Is it really necessary to have anything in the Constitution at all?

Mr. Carter - The original recommendation of the Committee was to leave this alone and members of the Commission objected, feeling that it was very wrong to have something in the Constitution which permits the power of appropriation for excess land. Even though it has been qualified by court decision.

Mrs. Orfirer - Is it your feeling that this does give the right to appropriate land in excess of that needed for a public purpose?

Mr. Carter - Without a Supreme Court decision, there is a question in my mind. It may be a philosophical problem rather than a practical problem. I like this language that has been suggested.

Mrs. Eriksson - I was trying to make it clear that no one has any rights that rise higher than those granted by the Constitution to the sovereign, and permitted under the due process clause of the federal constitution. In our Constitution, this is Section 19 of Article I, which is the general eminent domain power. However, that section, rather than using the expression "public purpose" uses the expression "public welfare." Let me read that: "Private property shall forever be held inviolate subservient to the public welfare." Then the rest of the section speaks only about public use, as does this section--Section 10. So it would seem to me we might say "which excess is needed for the public welfare" rather than "public purpose." Public purpose is not otherwise found in the Constitution.

Mrs. Orfirer - The other alternative, suggested by another attorney whom Ann asked to look at the problem, is, instead of the suggested language, is "Consistent with the limitations imposed by Section 19 of Article I of this Constitution." I don't think it makes much difference.

Mrs. Eriksson - It is my opinion that we are not really doing anything.

Mrs. Orfirer - Except reassuring people. We have several alternatives--recommend repeal, say we like it the way it is, propose the new language, or turn it over to the bill of rights committee and then let them work on it. If you feel one of these proposals for new language would satisfy people, my recommendation would be that we propose it to the Commission.

Mr. Carson - This language talks about public purpose, this section and Section 19, about public use, and Section 19 about public welfare. Why did you use public purpose?

Mrs. Eriksson - Because that is the language of many of the court decisions. But I would rather use public welfare because that is the language of Section 19.

Mr. Carson - Where this new language now appears, it occurs to me that most of those concerned with this problem--this still permits you to find a temporary public purpose for the excess land and sell it the next day--if you attach the new words following the provisions for selling, it seems to me clearer that at some point you had to have put that property to some public use. You could say "when it is not longer needed for the purposes set forth in Section 19 of Article I" if you want to.

Mr. Carter - I think the bigger problem is the acquisition of the land. Once that is done, the damage is done.

Mr. Wilson - You can really appropriate almost anything by saying you are going to use it for a public park. I see no reason to change this.

Mrs. Orfirer - I think people would be more comfortable if we refer to Section 19 and say the power goes no further than that. We are not harming the usefulness of the section in doing that, we are just doing something that people can subscribe to.

Mr. Wilson - But it is not necessary to add those words, and we shouldn't add unnecessary verbiage to the Constitution.

Mr. Heminger - But if genuine concern has been expressed on the part of some commissioners to keeping it the way it is, I think we ought to try to meet that concern by adding some suitable language.

Mr. Speck - One problem, if we propose any changes, is trying to explain eminent domain and appropriation of property when it appears on the ballot. It is a horrendous task, and overshadows everything else on the ballot.

Mrs. Orfirer - We can explain that we are protecting the people more this way. What is your feeling about how this should be presented to the full Commission?

Mr. Carson - I like the reference to Section 19 of Article I.

Mrs. Orfirer - That language is "consistent with the limitations imposed by Section 19 of Article I of this Constitution."

Mr. Carson - Where does it go?

Mrs. Orfirer - Where the other words went. Why do you need "limitation"? Let's just say "consistent with Section 19 of Article I of this Constitution."

Mr. Carson - If you add those words, do you want them in that location?

Mrs. Orfirer - Perhaps at the beginning of the section. Why not put it at the beginning "Consistent with Section 19 of Article I of this Constitution, a municipality appropriating or otherwise . . ."

Mr. Carson - Then it would apply to acquire also, and I think it should. "Public use" in the second line applies to acquisition.

Mrs. Eriksson - Section 19 says "when taken" and I think that means appropriated. However, I don't think there is anything wrong to placing it at the beginning.

Mrs. Orfirer - It applies where it applies and doesn't where it doesn't.

Mr. Carson - Would you explain, with this language in here, what restriction that places on the operation of this section?

Mrs. Orfirer - I think it restricts it to the use that the courts have interpreted cities have under this section--that land may not be taken for the purpose of raising revenue. It must be for a public purpose.

Mr. Fry - This section might make the impacted cities bill a little easier. If it is consistent with the idea of urban renewal.

Mrs. Orfirer - That is the reason for keeping it rather than repealing it.

Mr. Carson - I just don't know what the cases under Section 19 of Article I dealing with public welfare have held.

Mr. Wilson - I don't agree that what you have called an illegitimate purpose on the part of the drafters is necessarily wrong. If you have to acquire property for an improvement, you may acquire more than is needed for the improvement.

Mrs. Orfirer - But if you read the words of the debates, you find that they viewed it purely as a profit-making venture, and I think we want to make clear to future users of the Constitution that we do not approve of that, and what our intention is. Gene's response to this will be that we are opening it up to litigation, and I think we have to make a choice between that and assuring those Commission members who do not like the present provision that we do not intend that this be used for any wrong purpose. I think people's legitimate concerns should be reflected. I think we do more harm by repealing it and I don't think we will get the votes to leave it the way it is, so I think we are coming back with a reasonable proposal that will satisfy those who are concerned about this language.

There was considerable discussion about whether the committees should recommend a change, and since 2/3 of the Commission would not be necessary to leave the section as it is. No vote need be taken.

Mrs. Orfirer - How should we present this to the Commission?

Mr. Carson - It could be presented to the Commission as a recommendation for no change on the basis that since the matters of concern are protected by decision of the Supreme Court, we don't think the language ought to be touched, and that it will be open to litigation.

Mr. Fry - Just because it means that there might be further litigation doesn't mean that we can't touch it.

Mr. Wilson - I don't think it is an improvement.

Mr. Carson - I move the adoption of the language just read to the committee.

Mr. Heminger - I second.

Mrs. Orfirer - You're suggesting that we present it as a committee recommendation?

Mr. Carson - Yes.

All voted yes except Mr. Wilson.

Mrs. Orfirer - I would like to discuss another matter. We had expected that, at this point, the committee would become dissolved because we had completed our work. Dick Guggenheim raised a good point at the last meeting in the discussion about townships. We are all off on the wrong track in the discussion about townships. The problem is an urban problem or a megalopolis problem. I have been giving this some thought and whether there is a job still for us to do, and that is to pursue the problem of the cities, primarily the way taxation is used to either promote or impede proper re-growth or development of inner cities in order to see whether there is a constitutional role in this problem. I discussed this with Gene Kramer and with Dick Desmond and



they felt that it is a proper pursuit for the local government committee. That it would not be an easy thing to do on a piecemeal approach but worth looking into and interviewing some people and asking some questions as to what people in the urban centers see is this relationship and what they feel is the problem and to see whether it is worth our making any recommendations or giving serious study.

Mr. Fry - It is my feeling that we did explore this. We heard from the Municipal League, who would be most conversant with it.

Mrs. Orfirer - I'm not talking now about a township problem.

Mr. Carson - I'd like to recommend that Linda prepare an outline of what exactly she has in mind. As one of your committee, I'm at your disposal and if you feel we ought to investigate other things, I'm willing.

Mrs. Orfirer - Let us pursue it to see whether it's worth our considering.

Mr. Fry - I'd like to identify the areas we are going to get into that we have not already discussed.

Mrs. Orfirer - This would not be in relationship to governmental structure, but in relation to how to deal with the problems today of the core cities, primarily dealing with taxation.

Mr. Carson - I was absent from the last meeting, but wholly approve of the action taken with respect to townships. However, I personally have some ideas on this and would like to present them, either to this committee or to the Commission, on townships. I think there are a lot of alternatives. Should I present to this committee or to the Commission?

Mr. Carter - I think it would be better to present them to the committee.

Mr. Carson - One-third of the people in my county live in townships. There is no way they can incorporate. There is no way they can annex.

Mrs. Orfirer - Have you tried to incorporate?

Mr. Carson - Under the law you have to get 50% of the resident freeholders to sign a petition. In my township there are 28,000 residents. It's just not feasible, 10,000 land owners.

Mrs. Orfirer - That's not a constitutional problem, it's a legislative problem.

Mr. Carson - But what are we doing? Don't we have a role in determining that the needs of these people are being met?

Mrs. Orfirer - I would like to have the committee reconsider it.

Mr. Carson - Have you thought of, by constitutional provision, relaxing the incorporation requirements?

Mrs. Orfirer - No, because we thought it was a legislative matter. There is very little about townships in the Constitution, and my interpretation of the feelings of the Commission as expressed at the last meeting is that they do not want to lock into the Constitution anything more about townships. Townships are in a state of

flux and let's not lock it into the Constitution.

Mr. Carson - But we have 300,000 people who live in these townships with no way to incorporate.

Mr. Heminger - I don't think we are very happy with where we ended up with townships. We are really faced with the question, should the Constitution mandate something about townships or incorporation?

Mrs. Orfirer - We could recommend some changes to the legislature.

Mr. Carson - I think we ought to do what we think is right in the Constitution.

There was agreement that the question would be reconsidered at the next committee meeting on December 18, and the meeting adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
December 18, 1974

Summary

Present for the meeting of the Local Government Committee on December 18 at 11 a.m. in the Commission offices in the Neil House were Chairman Orfirer, Committee members Carson, Russo, Fry, Speck, Celeste, Staff Director Eriksson, and Consultant Stine and visitors as follows: Lois Mills of the LWV, Jack Rhymers of the C of C, Chester Hummell of the Township Trustees Assn., and Sue Cave of the Ohio Municipal League.

Orfirer - Nolan has a draft on townships for our discussion.

Mr. Carson - I have expressed the view during the deliberations of this committee, before the commission, and even before that that, at the time of the last material revision of the Ohio Constitution in 1912, I don't think we had any urban townships - at that time, they were rural and at that time I think the constitutional treatment was probably correct. I happen to live in a county that has quite a number of urban townships - in fact, about 1/3 of our population lives in these townships. I live in one myself so I am a little bit familiar with the form of government and what people think about it and so on. I had hoped to come better prepared with an itemization of the townships like these around the state, but I was not able to do a statewide survey and I don't know whether anyone has ever done that. My information is really in Hamilton county. We have 13 townships. They have had the same form of government since they were formed. The largest is Colerain Township which has 51,000 pop. Where I live is Anderson with population of 28,000. Columbia is 26,000. Delhi is 26,000. Greene is 50,000. Springfield is 49,000. Sycamore is 31,000. So, we have 7 which are in excess of 26,000. Two are in the 50,000 range. All in Hamilton County. There are also two with just a little less than 10,000 and two very small ones - Crosby and Whitewater with 1700 and 3200. Two rural townships only. Total population in the 13 townships is 291,819 people which is about 1/3 the population of the county. It's nearly 3% of the population of the state of Ohio. Our biggest city is Cincinnati. We have many small municipalities. There have been few new ones in recent history and there has been little annexation in recent history. The City of Cincinnati, from all I can see in recent years, has not really seriously attempted annexation or expansion and I don't believe the political climate today in the City of Cincinnati would favor annexing more territory.

The comment I've heard a number of times on this committee is that if you give townships that are urban in character powers similar to those of Municipal corporations, you are creating another governmental unit that is not a municipal corporation, not a township, not a county - just another layer of government. My response to that is, that may be, and I have no concern with that - whether the people in these areas incorporate or whether you give them powers they need as townships. The overriding concern with me is that an awful lot of souls live there, and the legislature has been pretty much leaving them in status quo - increasing the powers occasionally when asked to, but no really broad look at this problem. People say you should incorporate, but the fact is, you can't incorporate. Practically, you can't. The statutes require a majority of adult freeholders to sign a petition. The first thing the circulators have to do is make a list of all the adult freeholders and prepare a plat showing all the land and the parcels and names and addresses of owners. It's just not a majority of the population. If you wanted to give Anderson Township, where I live, municipal powers, - in order to form a municipal corporation, you'd have to get the specific signatures of 8,000-10,000 people, I would guess. I don't know how many parcels there are or how many freeholders there are but you have to get those specific people, not just electors or population generally.

You could, I suppose, incorporate a smaller part of the township but then the rest of the problem isn't solved - you have the rest of the township with the same problems. When you say, incorporate a township, to me it is just not feasible. I think the legislature probably knows that. The other stumbling block is the 3-mile limit - of any municipal corporation, as I understand it. (Mr. Carson displayed a map of Hamilton County and demonstrated that there were six municipal corporations whose consent to incorporation would have to be secured if Anderson Township residents wished to incorporate. He noted that the same thing was true of all townships.) This is the practical problem - the laws are not geared toward incorporation. The other thing I should address myself to - I guess there is some feeling in this committee that this is a legislative problem and the constitution should not be specific about townships. The drafters of our present constitution felt that municipal powers were a problem and they recognized that in the constitution. I don't feel the Constitution has to be specific - but I certainly think there is a problem here that the Constitutional Revision Commission should recognize, and if they consider it a problem they ought to deal with it rather than just say "It's always been a matter for the legislature."

I have no brief for any language I've suggested. It was a hurried attempt. I do recommend that if anybody felt favorably toward some kind of a provision in this regard it should go in the section where we have implied powers for counties for practical political reasons and that is, if the provisions are in separate sections, the township zealots might well urge adoption of the one relating to townships and vote against the one relating to counties. If some relief for townships were allied with the county provisions, I think it would help the passage of the county provisions, which I very much favor.

Mrs. Orfirer - I've been involved with efforts trying to solve the township problems for some 3 or 4 years now. I am very aware of the felt problems in this area and sympathetic to the feeling that there have to be some changes made. I feel regretful that there is this division within the committee. We all have respect for the energies and good wishes of everyone on the committee and on the commission. What we are all seeking is to solve the same problem. It is hard to find ourselves on opposite sides but I guess this is inevitable.

In this committee we did draft something that we hoped would solve some of the problems. We were not terribly happy with it. It was the best we could come up with, given our feelings about the situation. At the time we got through discussing it and hearing from people at the public hearing, the conclusion was really what we had started with, that it really was not a constitutional matter. We are starting from two different premises, because you feel that it is a constitutional matter. The problems as I have been told them, and as I believe them to be, grow out, primarily, of statutes that the General Assembly has passed - there is nothing in the constitution that stands in the way of anything for townships. The problems are the 3-mile limit, and the majority of freeholders - both imposed by the legislature, and both its problems to take away. I have not heard, and I think we ought to know this, what attempts have been made in any of three areas - 1, what attempts have been made to incorporate and been turned down by the city or cities around the townships; 2, what attempts have been made to get petitions signed, or is it just felt it is too difficult; 3, I know that the townships have petitioned the legislature for greater powers for townships but I don't know whether they have petitioned the legislature to remove the 3-mile limit and the requirement of the majority of the freeholders. I find myself at a loss to go on from there without this information. I think we all feel that you don't lightly change the constitution, you use it as a remedy when there is no other recourse, and my own feeling is that if some of the energy that the township people put into the letters we've received, the threatening letters - if some of that energy went into legislature to get some of the statutes changed, we would not be sitting here saying it's in our lap by default. I also feel very strongly about the county provisions - I've worked on them 2 years so I care very much whether they go down to defeat and so I ask myself how political do I want to be? Is the price going along with township provisions in order to not get opposite of the township people? I can't do it.

I feel we have to do as a committee what we feel is right.

Mr. Carson - I hope you don't feel that is my motive.

Mrs. Orfirer - No, I am just talking for myself. I don't by any means think that these people can be ignored. I don't think they should be. People feel strongly and positively about township government and I don't think the 40 or 50,000 people in an urban township have the kind of government they ought to have. I don't live with the problem, but I am willing to accept the fact that there are problems. Again, I just don't feel that the constitution is the place to deal with it.

Mr. Russo - I am not from a rural area. I am firmly convinced we should not give any more power to townships because it will delay the concept of county government. In Hamilton County, for example, you will have 13 more governmental units to deal with in bringing county government about, if you give home rule power to townships. We had a strong dissertation about 4 years ago on why we should have townships. People living in an area they can identify with, a closeness, a feeling of belonging to a lot of people. In the final analysis, though, if you give any more power to townships, and if the county form of government is to become a reality, I think you are making that more difficult and postponing that day. If you take the city of Cleveland, with its urban decay and all its problems, the only way we can solve these problems, in my opinion, is by going to a county form of government. And I think that should probably happen in every large urban area so that part of the county than can help solve some of the problems of rejuvenating the inner cities will help do so. We have 63 municipalities in Cuyahoga County but only 2 or 3 townships, so we don't have the same problem as in Hamilton County.

Mrs. Orfirer - Of course we are already going to have this problem of multiple municipal corporations. I don't know that we want to compound it, but I don't think it is all that serious to add 11 more or whatever. You made a comment, Nolan, about another type of government, and what I think some of us think is not that is is another type of government but the same government with another name - you will have a duplication. Why not, then, just plain incorporate instead of making a whole other kind of thing. I do agree that you need to be able to incorporate. But what is the matter with taking the legislative approach?

Mr. Carson - For some reason, the legislature hasn't responded. The statutes stay on the books just the way they were and there are 300,000 people who don't have the benefit of these powers that you are suggesting. If there is any purpose in this commission, it is to recognize problems in this state, particularly with respect to governmental structure, and if we think there is something awry in this state, we ought to recommend a change. I thought that was what we were for. The legislature has passed some laws evidencing a policy on incorporation, maybe at a time when this problem wasn't so serious. If we find problems, we should recommend reasonable solutions.

Mrs. Orfirer - But not necessarily constitutional.

Mr. Carson - Whether we give townships powers or make it possible to incorporate, we ought to recognize that there are people living in substantial numbers without their public officials having the tools to do the job that should be done.

Mrs. Orfirer - I agree that there are problems to be solved, but I do not agree that it's up to the Constitution to solve them. That's what the General Assembly is for. But I would like to know the answers to some of these questions. Chester, how much have you appealed for these changes to the legislature?

Mr. Hummell - We've appealed quite frequently, for specific items and for some general things. In this session just concluded, there are about  $\frac{1}{2}$  dozen bills addressed to the general subject of giving townships more powers. There is one question that I don't think this Commission has ever touched on and that is whether the legislature has the authority to give townships authority to pass ordinances? The Ohio Constitution provides that all the powers are reserved to the people, and then it goes on to provide for a state legislature and authorizes the state legislature to enact laws. In 1912, why didn't the legislature give home rules power to municipalities? There is a serious question whether the legislature can do that. Or whether you have to go to the Constitution and get the people to say that cities could enact ordinances. So I think there is a serious question whether the General Assembly can say to the townships, you can not enact ordinances.

Mrs. Orfirer - I agree.

Mr. Hummell - And if there is a serious question, the only place that question can be answered is in the constitution.

Mrs. Orfirer - I agree, but that is not what I was talking about. I was talking about the question of incorporating - the majority of the freeholders, and the 3-mile limit. Have changes in those things been sought from the legislature, and when, and with how much strength, and have they been turned down? You have answered very broadly, and said we have had several attempts in the legislature to get broader powers. I asked three specific questions: 1. what kinds of attempts have been made to incorporate. Have attempts to get the signatures failed? Have there been specific attempts in the legislature and how frequent and when to get the 3-mile limit changed and the provision about the freeholders?

Mr. Hummell - Attempting to incorporate is just an exercise in futility. With all the work that's involved, a person would have to be a blooming idiot to go into Boardman Township and try to get a petition to incorporate signed by the adult freeholders and then when you get it all done you know very well that the city of Youngstown is going to say no. Now, why was the 3-mile limit put in? That was about 1967. It was because the professional planners, among others, convinced the legislature, that what had happened in Cuyahoga County was a horrible example of what would happen in the rest of the state. That was put in the law to back up the broad concept that it was better for existing municipalities to become larger than to create a multiplicity of municipal corporations. At the same time, the annexation laws were amended to make annexation easier. Now, realistically, I am not going over to the legislature and ask them to remove the 3-mile limit. Again, it is an exercise in futility. They are not going to do it. They think there is more to be gained by leaving it there than there is to be gained by taking it out. I've appeared before you 3 or 4 times, and I don't desire to be repetitious although I cannot help it. I think you ought to be concerned about people, and concepts and everything else comes second. When a person has a problem at the local level, he wants to be able to go to his government and get it solved. If he goes to his village or city government the chances are he can get it solved at the local level. If he goes to his township govt., maybe yes and maybe no. That's why we think there should be more authority for township government. I'm not familiar with the proposal before you now, but we have proposals that we think provide a realistic answer - that this broader power should be given only to certain townships with high population and then only if voted by the people within the township. And considering the history of voting on county permissive government it might well be that no township would get this authority because I think it is characteristic of elected officials whether in the state legislature or in the governor's office or the mayor's office or whatever, they think they need more power than their people think they need. So they may vote them down.



But we think this authority should be at the township level if they need it. Countywide government, there is a lot to be said for and against it. But it covers a large area. We had an example coming from Hamilton County before our Local Government Services Commission, where people say the City of Cincinnati is too big to respond to the needs of the people, we need neighborhood government. And if a city is too big to respond to the needs of the people, certainly any county is. If people have problems in a local community, it won't be long, if we have county government, until they complain that the county does not respond to their needs. We need local government that can answer their needs. We think it is vitally important that townships have some authority. And we don't apologize if these powers look like municipal powers - we think the people in the unincorporated areas have every right to the same powers as the people in the municipalities. To some extent, the legislature has ignored these problems, and we realize that it is not entirely their fault because the townships don't have problems of the magnitude that the cities have. But we are getting to the place where we do have some of these problems and we do need some authority to solve them.

Mr. Russo - The county should take over some of these services though because any way you figure it, the cost per unit is higher at the local level than if the services are performed on a countywide basis. Supervision may be multiplied 50 times in Cuyahoga County. If we give those powers you are asking for, we are going to come up with a greater cost for local government.

Mr. Hummell - How else are we going to provide these services? In Hamilton County, Cincinnati provides some of the services. But right next door in an unincorporated area, the township must provide services. In Cuyahoga County, there are so many municipalities they practically covered the map. The City of Columbus had this aggressive annexation policy. So the counties are all different.

Mrs. Orfirer - I would like to answer one thing you said, Chester, which was that you had not heard this committee discuss whether or not the legislature had the power to grant the legislative powers to the townships. We are very aware of this problem which is one of the reasons we have provided that the county changes be constitutional. The reasons we have not so provided for the townships is because we didn't want it. We didn't feel that townships should constitutionally or any other way be given the same powers as municipal corporations. If there are 40,000 people and they need those powers they should incorporate. What we are hung up on, is where is it done. Mrs. Mills just made a good point, that one way or the other this is going to have to go through the legislature. If we recommend it, it still has to be approved by the General Assembly. If the legislature doesn't want it, it isn't going to be done in any event. We are planning to make some specific recommendations to the legislature on statutory material and I think this might be something we should think seriously about doing. It might be to remove the 3-mile limit or change the freeholder requirements.

Mr. Carson - How many are on this committee?

Mrs. Orfirer - Mr. Wilson, Sen. Calabrese, Mr. Heminger, Mr. Fry, Mr. Speck, Mr. Celeste in addition to those of us here.

Mr. Carson - Tony, I would like to comment on one thing you said - that you think a county charter is the salvation of the problems. Perhaps that is true in Cuyahoga County but I do not believe that is true in Hamilton County. However, one thing this committee did before I was a member of it which I approve of is the county powers section. You apparently want to drive counties toward charter government, but what we recommend was that we also give counties which don't vote a charter the implied powers - even without a charter, counties would have these powers. So I don't think this committee has recommended what you think ought to be done.

Mr. Russo - What we are doing is giving them both - where possible, get a charter, where it is not, we have an alternative. If townships all had their problems in common we could get to a constitutional issue on it but their problems are not common. A 50,000 population township and a 3,000 population are not the same.

Mrs. Orfirer - No one is asking us to touch those 3,000 population townships. They are just asking for the powers for the urban townships.

Mr. Russo - I don't know whether you can put anything in that doesn't affect all townships.

Mrs. Orfirer - You would have to provide for a classification, which is what we were doing in our original proposal, which is essentially a classification no matter how you write it.

Mr. Carson - I would like to underline, just for the record, that the county commissioners who appeared before this group who were representing the association said that they had no problem with giving townships more powers but they wanted to make sure that the exercise by the county of powers would be paramount to the exercise by townships of powers. They indicated that they would favor that kind of move.

Mrs. Orfirer - I really don't understand why the township trustee association, particularly, as you point out, without opposition from counties doesn't go to the legislature and be persistent about incorporation. They are persistent in all places except there.

Mr. Hummell - Perhaps I can explain this to a certain extent. Some of these problems that you live with at the local level are pretty petty to the legislature. They are the problems that are being solved in village councils and city councils. Are we going to have a leash law for dogs? Are we going to have a Green River Ordinance? Are we going to have a housing authority, in some of the bigger communities? You cannot go to the legislature and get up any enthusiasm for a law saying you have to have all dogs on a leash. Somehow we have to solve the local problems without going to the legislature. We need this authority.

Mrs. Orfirer - What I meant was to incorporate - to get rid of these things that are standing in the way of receiving powers the same way any other group does.

Mr. Carson - The change in philosophy of this committee from one that is not a constitutional problem occurred a few weeks ago - in fact, this committee recommended a constitutional amendment with such barriers in it that it would not have been of any help and then it was withdrawn when it was presented to the commission. What happened? Was it at the commission meeting?

Mrs. Orfirer - My feeling was that there was not a radical change in the committee's attitude. If you go back and read the minutes and review our struggle and confusion, we felt this is a problem everyone is saying we ought to do something about and we recognized it as a problem and we began learning about townships. I said I think that form of government is something that is constitutional. We traced what is in the constitution on townships. Then we discussed: what do we want for the future of government in Ohio? A strong feeling that the future of government is changing, in relation to townships. A lot of opposition to the idea of freezing something into the constitution rather than leaving it flexible so that the legislature can experiment just as they could change the 3-mile limit without having to go to a whole constitutional amendment. We felt we should make this

attempt to solve the problem. Perhaps we should never have brought it to the commission. None of us were totally happy with it but we felt we should do it. We took it to the commission to see whether someone could find a better solution or thought that was a good one. What came out of the discussion at the commission meeting, was more of the same - opposition from townships, opposition from municipalities, and a strong feeling on the part of the commission members that this doesn't belong in the constitution, it shouldn't be brought before us, forget it. I would have fought for it in the commission if I felt it was right. We brought it to open up the discussion and because so many people had applied to us and said there was a problem.

Mr. Carson - I wonder if there is any need to prolong this?

Mrs. Orfirer - I'm willing to take it to the entire committee and take a vote of everyone, even those who are not here.

Mr. Carson - This meeting was called for this purpose and they are not here. I trust neither of you have any problem if I took this to the whole commission.

Mrs. Orfirer and Mr. Russo agreed.

Mrs. Orfirer - I would insist that we get a vote of the entire committee except that, from my reading of the committee and from prior discussions, I think it would only be delaying what you want to do.

Mrs. Orfirer - I move we reject the proposal and that you take it to the full commission if you want to.

Russo - second.

The motion was adopted, with Mr. Carson voting in the negative.

Mr. Russo - My philosophical concept is county form of government and anything I see that stands in the way, I am opposed to. As a matter of fact, when we started out, I went so far as to say that we should have mandated county form of government without elections. Of course I backed away from that because it seemed so strong.

Mr. Celeste arrived.

Mrs. Orfirer - Nolan spoke for the draft he had prepared for township government. We have discussed it for an hour or so and heard from Mr. Hummell and have rejected it, but agreed with Nolan that he carry it to the full commission because we as a committee don't want to recommend it. Briefly, we agreed that there was a problem in townships, and that the 3-mile limit and the necessity to get signatures of a majority of the freeholders were obstacles to incorporation, but we felt that these had been legislatively imposed and should be legislatively removed. Incorporation, we felt, was the answer for these urban townships rather than creating a duplicate form of government. Nolan feels that the legislature has not acted and he feels this is a constitutional problem. Is there anything else to discuss? There will be up this afternoon at the commission meeting the question of Article XVIII, Section 10 - the eminent domain section. There was a vote in the commission to amend it, which failed, and then a motion to repeal which received 8 yes and 6 no votes, and was submitted to vote of commission members after the meeting. There are no where near enough votes - there are 12 yes votes at the present time.

Mrs. Eriksson - I'm sure Dick will call the roll of those present today who did not vote but it does appear unlikely that there will be enough votes for repeal. The amendment proposed at the last meeting would have inserted a specific reference to the eminent domain section. That failed. Then the motion was made to repeal the section. If that does not receive sufficient votes, that leaves the section standing as it is in the constitution, and if the committee wishes to pursue its proposed rearrangement of Article XVIII we would have to get a commission vote on changing the number of this section. The Municipal League wishes to retain this section as it is.

Mr. Carson - We have tried everything else. I would think they would vote for that.

Mr. Russo - Since we did not recommend the township proposal that was presented and if it fails in the full commission when presented, should we then meet with the township officials to see what proposed legislation they want to recommend?

Mrs. Orfirer - I think we might ask them to send us any proposals that they might have. And then we could discuss them and decide whether we want to recommend the legislative proposals to the full commission or just attach them as an addendum to our report. In our report, I think we have to say that we have determined that there should be no constitutional provisions or changes for townships.

Mr. Carson noted that he would file a minority report.

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Mr. Carson - I presented two proposals. One that would add a new provision to the county implied powers section which would permit townships of a certain population - 10 or 20,000 or whatever - by a vote of the people - to adopt implied powers, and automatically their board of township trustees would be increased from 3 to 5 because there was an expression that you need a larger legislative body than 3. It also provided that any conflict between the exercise of these powers by the township with the county of their ordinance powers or of a municipal corporation of its municipal powers or any exercise by the state legislature of its powers would all be superior to the township - the township would always lose. For instance, in Anderson Township there is a small municipality - Newton - 150 years old - encircled by the township - it has never grown and never wanted to grow, never will grow - it is a part of the township. This provision would provide Newton's decisions with respect to its territory would always be superior to the township's. The last thing is that the township would have no taxing power unless granted by the legislature, consistent with the county power section. The other approach which would also solve the problem, would take a constitutional amendment. I have some language that would provide if an entire township with a population in excess of, say, 25,000, desired to become incorporated it could do so by a vote of the people upon petition and would exclude the necessity of getting the signatures of the adult freeholders in the township and would also eliminate the necessity of getting the approval of every municipality within 3 miles. This would apply only to the whole township. Only then would you relax the incorporation restrictions. If you just wanted to take a part where the industry is, you couldn't do that. I don't care which of these approaches would be taken to get the necessary powers. I have no problem with the 3-mile limit in a normal incorporation - only under these particular circumstances. In my township, there are about 6 municipalities within the 3-mile limit and there is no reason why they would all consent.

Mr. Fry - What would they lose if they do consent?

\* Ms. Cave - The reason for the 3-mile limit was to prohibit small areas with industrial tax base from incorporating and reaping all the benefits.

Mrs. Orfirer - We are talking about two different things; one that we would have to have constitutional change for classification of townships; otherwise giving relief to the townships would mean that any size township would get the same powers.

Mr. Carson - The option to annex a valuable part of the area if they want to.

Mr. Fry - At the present time the township is taking care of a lot of services in that area. Don't they have their own police protection, fire protection?

Ms. Cave - I got the impression that the township people really didn't want to incorporate, they wanted the home rule powers without incorporation.

Mrs. Orfirer - Dick Carter said that he thought they wanted the powers without the responsibilities. Financial and otherwise. They have not ever said that they really did want to incorporate. I think Chester said pretty much the same thing today. They never have tried to have the incorporation laws changed.

The meeting adjourned until called by the Chairman for the purpose of discussing the problems of the inner cities.

Ohio Constitutional Revision Commission

Local Government Committee

April 10, 1975

Minutes

Present at a meeting of the committee on April 10 were Mrs. Orfirer, Chairman, Mr. Unger, Mr. Russo, Mr. Heminger, Mr. Montgomery, and Mr. Nemeth and Mrs. Eriksson of the staff. Ms. Cave represented the Ohio Municipal League.

Mrs. Orfirer introduced the members of the committee and stated that the committee would be dealing with the problems of the inner cities.

Mrs. Orfirer: One of the problems is this inability to raze vacant and vandalized buildings. Mr. Russo is talking about a bill he sponsored.

Mr. Russo: That bill allows a city to tear down condemned property and then apply the liens to the remaining property. If that property is sold, the money is paid to the city. It should go into a rotary fund. As they collect money, they can continue to spend it. I think what we should really look at is the seizure of property in a designated urban renewal area so you could speed up the movement of property. If there is one piece of property in litigation, you have to wait until the litigation is over before you can go forward. We should consider some constitutional solution to allow the city to take title to the property, no matter what kind of court action is pending, and allow for the settlement of the questions in court later, even though they are using the property. The problem of urban renewal is the acquisition of property and waiting while the court finds heirs, etc. It is a long legal matter. I think we should shortcut it by saying, "Look, this is a designated urban renewal area", and let the city take title and use the property and whatever litigation is going on, let it go on forever if necessary, but why let a few pieces of property hold up the entire project?

Mr. Montgomery: You want the same thing that is used for highways.

Mrs. Eriksson: You're talking about "quick-take."

Mr. Russo: Right. The city doesn't have that right for urban renewal.

Mrs. Eriksson: Have you ever introduced such a bill?

Mr. Russo: The bill to raze condemned property has been introduced in the past.

Mr. Unger: I think you have put your finger on one of the crucial issues. Not just demolition, but it relates to any kind of action in an area that is blighted or for some reason needs something, and the crux of the problem is that under the federal program and the money available, a lot of things could be done. Now that the money is no longer available the desire to designate it and give certain authority to local governments no longer exists. If the cities need these things perhaps we need to examine whether we can do it under state auspices and whether we need enabling legislation, or whether we need constitutional amendments to make some of these things possible we used to do with federal money and authority.

Mr. Russo: The fact of the matter is that the city of Cleveland has \$18 million in property value in the urban renewal program. They have abandoned it, so to speak, and they can't use any of that property because they are still asking them to adhere to the original plan, and the original plan wasn't going to be funded in the first place--if there is private property in that area, they say we are not in an urban renewal area because the original plan is gone. Consequently, the city of Cleveland has many acres that are empty that they can't get off dead center and offer to private developers, or to anyone that's interested. The streets, the water and the sewers are all there. You could get cheap high-grade housing because all those initial costs are already in, but you can't do it because you don't have financing for that particular purpose, and I think that will take a constitutional amendment.

Mr. Unger: We have to get out of the federal lock, and if we need authorization or jurisdiction we have to find it in state law.

Mrs. Eriksson: Is the real question a money question? That the city doesn't have the money to put in the sewers and the streets?

Mr. Russo: No. What happened was that they moved too rapidly on too many projects. And as they moved too rapidly in order to get the great flow of money, rather than completing one project at a time, they are locked in with about \$18 million worth of land and there isn't any more federal funding for it.

Mrs. Orfirer: There is nothing to do with it now that they have gotten into the diverse number of projects.

Mr. Russo: We tell them, you can pick up those five houses and tear them down and put together five acres and offer it to a developer; I think that could happen very easily.

Mrs. Eriksson: Is the question about being able to turn the property over to a private developer?

Mr. Russo: Not quite that. I think the taking of the property by the city without going through all the court motions of the judicial system. First, take the property, and then go through the judicial system. You can't do that, now.

Mrs. Eriksson: So it's the quick-take question, and then the city assembles the property and so you are not really talking about the authority to turn over to a private developer--the money is the money necessary to purchase the property, not the money to develop or build the project.

Mrs. Orfirer: To put the package together.

Mr. Unger: There may be subsidy money needed in writing down the value of the property which is a part of the federal urban renewal. It is done by other states, but not by Ohio. Under the federal urban renewal legislation, you can take property in a designated area for a designated purpose and pay, for example, \$1 million for it and sell it for less than \$1 million after you have determined that its market value is less than you had to pay for it--market value in terms of putting a price tag that is economically viable on it. That's called "write-down."

Ms. Cave: I would like to comment on a couple of points. There was a proposed constitutional amendment on the ballot recently that dealt with quick-take for water and sewer purposes. It had opposition from almost everyone. It was very unpopular. I would



assume that it would have the same degree of unpopularity no matter what the quick-take was to be for. Also, there was a bill passed last year that does permit cities to turn over property to a private developer with a provision for tax abatement. It's almost impossible to sell such a program.

Mr. Russo: That bill--the impacted cities bill--did more things than we are talking about. And that was the big fight over the bill. Also, in the eminent domain matter, that was authority to call another area blighted. All we're talking about is the present urban renewal areas. That's the difference between that and the sewer concept. In the sewers, you are talking about private property, and you are taking away private property in different areas. We are talking about urban renewal areas where everyone can see their plight and there shouldn't be any fight over that kind of an issue.

Mrs. Orfirer: I recall very vividly our discussion in the Commission about the taking of so-called "excess" property. That was fairly innocent compared to what we are discussing now. And that was the section that was used for urban renewal. We're going to have some opposition in trying to implement it along those lines, but at least I'm glad that this has come out and that this is an attack.

Mr. Unger: Housing legislation was enacted a few years ago setting up the housing board with authority to give seed money to private nonprofit corporations to build or rehab lower or middle income housing and also to supply loans. It's hampered now because it is waiting on court decision to see whether it is constitutional to proceed with what the law has prescribed. Meantime, it is a problem. The question is whether it is constitutional for the state to loan money to private nonprofit corporations for the construction or rehabilitation of low or middle income housing. Whether housing is a public purpose is not yet established. That's the reason it is held up in the courts.

Mr. Montgomery: I would think that that can be done.

Mrs. Orfirer: I have jotted down some of the goals we discussed. Encouragement and promotion through governmental action of industrial and commercial development within urban areas, creation and preservation of employment opportunities. Are these goals which you think we can endorse? Are there other goals we should add to our study?

Mr. Montgomery: Better invite the Governor to sit in. These are the things he is promoting.

Mr. Unger: One of the Governor's proposals--the one on housing--is the same one I mentioned.

Mrs. Orfirer: Some of these goals we already worked on in terms of what Section 13 of Article VIII does to extend the authority not only to create jobs but to preserve them. In the statement of these goals, we ought to say, obviously, as related to constitutional possibilities.

Mr. Montgomery: When you say "commercial and industrial development in urban areas," that is a big thing and is flying in the face of conservationists and others who say that we should get out of the congested area where it is going to cause all the smoke--it might be better to disperse development than to concentrate it.

Mrs. Orfirer: What do you do with the depleted tax base of the city where they have nothing left to provide services?

Mr. Unger: I was going to take it around the other way and say that maybe a third objective is to protect and develop local government revenue, particularly in inner cities which are deteriorating.

Mr. Nemeth: We haven't talked about housing. Is that implicit in what you say, or do we want to exclude it?

Mrs. Orfirer: I don't think we want to exclude it. My feeling is that in preserving cities, one of the things we have to do is to get people to move back into them.

Mr. Montgomery: I know it is important to rebuild inner cities, and also the question of what should be where is important--should we permit the urban sprawl, cutting into the countryside and making a mess of things? I just don't know how much is a constitutional problem.

Mr. Unger: Only in terms of whether there are limitations on getting the job done.

Mr. Montgomery: We should remove any impediments.

Mr. Unger: I think the biggest impediment is the lack of cash, the lack of desire in many cases, the lack of organization to get it done, and the Constitution is at the end of the line. But there are some constitutional problems.

Mr. Heminger: Wherever we can identify the constitutional problems, it is certainly worth looking into.

Mr. Nemeth: A Department of Economic and Community Development publication that I have been reading mentions that one of the problems of Ohio municipalities or local governments is the doctrine of pre-emption. Do we want to go over that again?

Mr. Russo: Yes.

Mr. Nemeth: Do you think that is an impediment?

Mr. Russo: I really do. Cities just can't get any money with the pre-emption concept. You have to get money somewhere and we only allow them a very narrow field to get it from. They become stepchildren of the state and federal government, seeking from various agencies. No bold mayor can get out there and ask for a tax increase, because he is limited to what he can ask for. It's very difficult to get an issue passed. If we change the pre-emption doctrine, at least we can change the source. Of course, it all comes from the taxpayer, but at least the gathering point would be different.

Mr. Nemeth: Wouldn't the legislature still have to authorize the imposition of certain kinds of taxes?

Mrs. Eriksson: I would put pre-emption at the bottom of the list. As a constitutional issue, I really don't see how it will solve the problems you have raised.

Mrs. Orfirer: At our meeting in Cleveland, we mapped out a tentative plan of procedure. This will be mailed to you all. We started with a research plan. A statement of the problem from other sources, such as the DECD, local officials, urban renewal administrators, housing administrators, and from non-public development interests such as chambers of commerce, growth associations, etc., so that we would get a broad view of how other groups see the problem. Then research into the various types of inducements or incentives offered by other states to combat the same types of problems. Some of these would be tax incentives for locating a commercial or industrial facility in a low-income area by way of credits, exemptions, or abatement of various types of taxes for various periods of time. They wouldn't have to be permanent tax abatements.

Mr. Russo: We passed a bill like that four or five years ago, that was for residential and industrial development also, in urban renewal areas.

Mrs. Orfirer: Let's find it and see what it says and what has happened to it. Another type is tax increment financing--payments in lieu of taxes made by commercial and industrial establishments to finance acquisition of land and construction of improvements in the area in which such establishments are located.

Mr. Nemeth: We already have that in Ohio, also. Community improvement corporations.

Mrs. Orfirer: I wasn't aware of that. Is it working?

Mr. Nemeth: I'm not sure how much it is used today, but it was at one time. It was counted as being quite an accomplishment.

Mr. Montgomery: I think it has been used quite a lot. A lot of communities have industrial parks that never thought of having them.

Mr. Unger: Its use has been limited, but where it has been used it has been very successful.

Mrs. Orfirer: Why was it limited?

Mr. Unger: I don't know what the problem is--why its use has been limited, so that it was not used more effectively, and more widely.

Mrs. Orfirer: Maybe that's what we need to look at.

Mr. Montgomery: In small towns that had no big entrepreneur, no big operator to push this, they weren't able to use it.

Mr. Unger: The same thing is true with this revenue bond financing. When this is available to counties and local areas, some use it very effectively, others haven't used it at all. But I don't know what the problem is.

Mrs. Orfirer: At least, apparently there is no constitutional impediment.

Mr. Montgomery: We just built a \$1 million addition to our home office building in Celina and saved \$300,000. by using it.

Mrs. Orfirer: Maybe we need to promote it or advertise it more.

Mr. Montgomery: It's being used in smaller projects. One reason why, is the investment houses haven't been able to float any new issues because of the stock market disaster, and McDonald and Company have promoted it and they've been able to make money on it.

Mrs. Orfirer: The next point is the one we discussed earlier--the use of eminent domain to assemble land for redevelopment, including creation of land banks and extension of eminent domain powers to non-governmental entities. We see the red flag. Low-cost financing by way of loans, or loan guarantees, including the issuance of bonds, both revenue bonds and general obligation bonds.

Mr. Unger: This is where the housing can come up, and the constitutionality of that.

Mr. Russo: If we recommend constitutional change for this November, we don't have to worry about it's being hung up in the courts.

Mr. Montgomery: This is why we should look at the Governor's proposals.

Mrs. Orfirer: I think, with relation to the Governor's proposals as well as any legislative proposals, we should look at them and come to our own conclusions. We can support them if they agree with our conclusions. One of the things on our outline is a study of recent proposals by the Governor.

Mr. Russo: We should also look at the bills proposed by the legislative democrats since the differences and the hangups seem to be on minor details, not on the major concepts. Maybe we can be the catalyst to get these things off dead center.

Mrs. Orfirer: Maybe this is where we should begin. Give us a rundown on what they really mean and perhaps some comparison with other states and how they would fit into implementing our goals, maybe we could begin in the next month or two to take some stands on them.

Mrs. Eriksson: I would like to emphasize that before the committee makes any decisions you should look at the debt recommendations that we have already made; they deal with some of these issues.

Mr. Russo: Is there any legislation in on the debt limitation?

Mrs. Eriksson: They had hearings last session and now Mr. Roberto has introduced a resolution that incorporates part of our debt recommendations.

Mrs. Orfirer: But the Governor's proposals would really wipe out our debt recommendations.

Mrs. Eriksson: His proposals are a continuation of the past pattern of approval of individual debt.

Mrs. Orfirer: But the amount is so enormous that the amount would use up all the amount available in our proposals.

Mrs. Eriksson: I'm not just talking about the debt, I'm talking about the constitutional prohibition against doing some of the things you are talking about--lending aid and credit

of the state and the prohibition against political subdivisions lending aid and credit also--those two proposals are incorporated in the debt proposals. We would modify them. "Lending aid and credit" we would replace with a proposal which authorizes the General Assembly to specify public purpose. It may be that you are going to run into other constitutional barriers, but I think the debt proposals has to be an inherent part of this committee's study--what the commission has already recommended. They might solve some of these problems in a way that may be better than the Governor's proposal.

Mrs. Orfirer: Please present us with the materials you think we need to proceed intelligently with our study of the problems and goals we have outlined.

Mr. Montgomery: I think our input is very important and we ought to get it to somebody. We have been working on it for two years. Our proposals are made with deliberations, unemotional. It seems a shame to waste it.

Mr. Unger: We should look at the debt package of proposals made by the Commission together with the Governor's proposals and see where we are.

All agreed to proceed on that basis.

The meeting was adjourned. The next meeting was set for 8 p.m. on May 8, the night before the Commission meeting, in the office.

Summary

The Local Government Committee met at 8 p.m. on May 8, 1975, at the commission office, in the Neil House in Columbus. Present were Mrs. Linda Orfirer Chairman, and committee members Fry and Guggenheim. Also present was Julius Nemeth of the Commission staff and Ms. Susan Cave from the Ohio Municipal League.

Mrs. Orfirer - To begin with, what I'm going to do is to run quickly through what we did at the last meeting. We started out with Tony Russo talking about the cities needing the "quick-take" ability for urban renewal, the same type of thing we have for highways. Paul Unger pointed out that federal money is no longer available, and that we should look to the state now. He asked whether we need enabling legislation or a constitutional remedy. Mr. Russo pointed out that Cleveland has about \$18,000,000 worth of land tied up which they can't use now because there is no more federal funding and there is also the problem in relation to taking the property. Mr. Unger said that we may need subsidies for "writing down" the value of the property. This is done by other states but not by Ohio. I have a question here--why not? Maybe you can answer it, Julius,

Mr. Nemeth - It would probably amount to the extending of aid and credit . Under the present constitution, it probably can't be done.

Mr. Guggenheim - I have a whole lot of questions already.

Mrs. Orfirer - Find. Let's start right here.

Mr. Guggenheim - When you talk about "quick-take", would that require a constitutional amendment? Under what authority do they do it with the highways?

Mr. Nemeth - I think that took a constitutional amendment.

Mr. Fry - No, it's by law. We went into this when we had the "impacted cities" bill at the last session. We were able to get part of it through. But where the General Assembly backed off was where the local urban renewal organization is given the right to make a "quick-take" on this sort of property. They felt that this was denying property rights, and that it does have to be a constitutional amendment. But if we establish this through the constitution, then we're going to get the problems of decaying inner cities and things of that sort.

Mr. Nemeth - Wasn't there an amendment on the ballot a couple years ago for "quick-take" for sewer and water easement purpose?

Mr. Fry - Yes, and it passed.

Mrs. Orfirer - No.

Mr. Nemeth - In fact, it was very badly defeated .

Mr. Guggenheim - If we don't have to put it into the constitution, why do we get into it?

Mrs. Orfirer - I imagine we do, Dick. If it were declared a public purpose, couldn't they do it with a "quick-take"?

Mr. Guggenheim - How are they doing it with the highways? They are doing it with the highways.

Mr. Nemeth - I think it is under a constitutional authorization.

Mr. Guggenheim - What I'm trying to sort out here is what our constitutional problems, because I get completely bogged down--Mrs. Orfirer, let's make a note to find out.

Mr. Fry - I know that when we were talking about the "impacted cities" bill, we were under the impression that if the legislature adopted it, it would be possible for urban renewal authorities to go ahead and do this. But I may be wrong.

Mrs. Orfirer - Back to this "writing down" of property, which is done in other states and you said it's not done here.

Mr. Guggenheim - Where would the money come from?

Mr. Nemeth - That would be selling the property at a lower price than what the municipality bought it for, isn't that correct?

Mrs. Orfirer - Well, that's what Paul defined it as. I thought it was something different.

Mr. Nemeth - No, that's what I understand it to be.

Mr. Fry - The proposal we had was that the land would be valued at whatever it was on the tax duplicate prior to any improvements. And they made improvements, they would receive a tax abatement for a number of years.

Mrs. Orfirer - That's a different thing. That's "tax increment" financing, isn't it. In a "write-down", you take the cost of the land and subtract all the other costs.

Mr. Guggenheim - That would give them the authority to pay a million dollars for some land and sell it for \$800,000. Is that what it is? Where does the \$200,000 come from?

Mr. Nemeth - Well, I presume that that is something which a city would pick up in the first instance--that would be the lending of 8.

Mr. Guggenheim - There is no authority for the state to give them that \$200,000, as I understand it now.

Mr. Nemeth - It would have to come from the municipality.

Mr. Guggenheim - Is there any authority for the municipality to give them that?

Mr. Nemeth - well, we don't believe that there is. Not under the present constitution.

Mr. Fry - But the local government has the authority to abate taxes.

Mr. Nemeth - Yes. But they don't have the authority to sell for less than what they bought for.



Mrs. Orfirer - I learned about this in class. What we were told is that there are four different kinds of costs: the purchase of the land, the infra-structure costs, and a couple of other things. You can deduct this from the value and what you have left is called the "write down". In our example, that would be \$800,000. We were discussing the fact that the federal government would then pick up a large proportion of the "write-down", like 75%. I don't know whether they still do that or whether you have to have a law in your own state to take advantage of it.

Mr. Nemeth - I don't know whether it's in the 1974 act, which apparently could control here, because all the prior categorical grants were merged into it, that is the 1974 Housing and Community Development Act. This is a block grant type of program. And whether you can do it under this law or not, I don't know, but we can certainly find out. We'll probably invite some people from HUD, which is a federal agency, to the next meeting.

Mr. Fry - I think that gentleman over at HUD would just love to come over here. If we called him, he would be here in 15 minutes.

Ms. Cave - May I suggest a quote "a city person"? He has conducted seminars all over the country about the federal block grant program. He had charge of it for the city of Dayton, and a very competent young man. His name is Ron Gatton. He is the assistant to the City Manager for development, and about 20 other things.

Mr. Nemeth - Would he be in a position to say what there is in the present Ohio constitution? That would prevent us from getting the full benefit of the federal program. If you asked him, I am sure he would come.

Mrs. Orfirer - What about Dick Desmond?

Mr. Nemeth - I don't know. I've never really discussed the problem with him, but I imagine we could find someone closer.

Mrs. Orfirer - O Kay

Mr. Fry - We're going to use the impacted city bill in Springfield. We have an issue on the ballot in June which if it goes through would allow us to buy the whole central core of Springfield, with city money and will encourage people to develop it and build on it, with the incentive that their taxes will be abated for a period of 20 years. I don't think we'll get any federal money but we already have two commitments on it, for example federal credit corporation which you may not have heard of but it is a large corporation. The difference between their building and our new downtown area and the building where they are now is what they will save in taxes.

Mr. Nemeth - Is this a 1728 type of corporation, an urban redevelopment corporation? That we are talking about.

Mr. Fry - Private money, absolutely. It's not a big deal for cities the size of Cincinnati or Cleveland but it's a lot of money for Springfield--5 or 6 million dollars.

Mr. Guggenheim - Will they be free from all taxes on the property?

Mr. Fry - No, no. They have an abatement on the improvements. They will still have to pay the taxes on the property that they bought to put up an old building.

Mr. Nemeth - At the level at which taxes stood at the time they bought the property.

Mr. Fry - And those buildings have all been torn down and they are putting a new building up. What we lost in the legislature for groups wanting to do this is the power of eminent domain, where they could go in and say we are acting on behalf of the urban renewal corporation, go into property that didn't want to sell.

Mr. Guggenheim - Does the city have the power to go in and take it?

Mr. Fry - Not unless they were going to use it for municipal purposes. They can't go in and take it and then sell it to a private operation. They can go in for the purpose of putting up a city building or a jail.

Mr. Guggenheim - In Cincinnati I don't know how they do it, but they do it. They do a great job, but a community improvement corporation can appropriate land and sell it to a private developer.

Mr. Fry - This is a really significant proposal because we could really change the complexion of our local community.

Mrs. Orfirer - Sue talked about the "quick-take" for water and sewage having failed and a bill last year permitting cities to turn property over to a developer with a provision for tax abatement. Now this would do what you were just talking about it would permit the cities to buy the property. That's the impacted cities bill which passed at the last session.

Mr. Fry - That's what I was talking about.

Mrs. Orfirer - I didn't realize it was that recent.

Mr. Fry - But the power of eminent domain was removed from that bill.

Susan Cave - Well, the power wasn't removed for the cities. In the original bill the cities were to delegate their power of eminent domain to private developers. That part was refused. The City still retains its power of eminent domain, but they do have to go through all the standard court procedures, before taking the property. Then they can turn it over to a developer. This is permitted by the impacted cities bill Senate Bill 90.

Mr. Guggenheim - But can they sell it for less than they paid for it? That's what we were asking before.

Mr. Nemeth - I don't think the bill addressed itself to that.

Mr. Fry - No.

Mrs. Orfirer - Getting back to what we discussed at the last meeting. Mr. Unger brought up the matter of seed money for private corporations to build low and middle income housing.

Mr. Nemeth - Well, the problem with that is that there's nothing in the constitution now which authorizes either the state or a political subdivision to lend money or to guarantee a loan for housing purposes.

Mrs. Orfirer - Now we could do that if we got a change in the constitution which declared housing to be a public purpose.

Mr. Nemeth - Certainly there would have to be a determination that housing is a public purpose but I'm not sure that that would have to be handled in the constitution. The Supreme Court would probably accept a legislative determination. The problem is that the other purposes for which the state or political subdivision may lend their faith or credit are listed in the constitution. Housing is not. I am thinking now of Section 13 of Article VIII. However there are other approaches including removal of the prohibitions presently contained in Sections 4 and 6 of Article VIII concerning which the Commission has already made a recommendation.

Mr. Guggenheim - In other words, section 13 overrides Section 4 in that respect.

Mr. Nemeth - Yes. That was one of the reasons why it had to be enacted. There had to be a way around that prohibition.

Mr. Guggenheim - Four and six say that neither the state nor any political subdivision can give money to anybody.

Mr. Nemeth - In Saxbe v. Grant the court decided that the use of the word "credit" in Section 4 meant <sup>not</sup> only the loan of money but extending the power of the borrower to borrow.

Mr. Fry - Right.

Mr. Guggenheim - I can't help but think that there was a reason for putting these prohibitions in, in the old canal days

Mr. Fry - Or the railroad business

Mr. Guggenheim - Now this Section 13 has really reversed that one and they could really put the canals and railroads right back in.

Mrs. Orfirer - Maybe they should.

Mr. Guggenheim - I'm not so sure about that but I can't see why they don't include housing, in here. Take distribution is a highly private thing really.

Mr. Fry - I think the difference is in the days when that was made a part of the constitution the railroad and the canal interests were so powerful that they could control the will of the General Assembly. I don't think that's the case today. In the last year we have two or three corporations come in and take advantage of this new change in the constitution

Mr. Guggenheim - What happened is the state loaned them money

Mr. Fry - No, we are not loaning them money but you 've got the credit of the state supporting the bonds that are issued. For example, we've got an example of the Castide Corporation whose headquarters are located in Portland, Oregon and they have a branch in Springfield and they recently decided to spend \$2,000,000 to expand their facilities there. So the community improvement corporation issues bonds, the local institutions take the bonds, and if the bonds are not paid off somewhere in the background there is the fact that the state is going to take care of them.

Mr. Guggenheim - Is it a revenue bond?

Mr. Fry - It's a revenue bond. Payments on the bonds come from a monthly check from the corporation.

Mr. Guggenheim - And the state's credit is in back of it? I have been involved with revenue bonds where the state has no liability.

Mr. Fry - Maybe it's the county's responsibility. I don't know, but there are governmental guarantees on these bonds, either at the county level or the state level.

Mr. Nemeth - It goes through the Department of Economic and Community Development.

Mr. Fry - That was my impression.

Mr. Nemeth - There's a state reserve fund for the purpose. I think they're called moral obligations because you don't have full faith and credit of the state involved.

Mrs. Orfirer - You mean you're doing like New York?

Mr. Fry - Maybe you could check this out, Julius and give us the word.

Mrs. Orfirer - All right, gentlemen, let's move on.

Mr. Fry - Linda, may I suggest this? This goes for everything we're doing. You know time is getting short as far as the Commission is concerned. If we want to do it, we'll have to have another meeting in another week or two weeks. Let's get it done so we can get it to the full Commission. I'm going to say the same thing at the Commission meeting tomorrow. I think we're going to have to press this and get it wrapped up.

Mrs. Orfirer - Right. Let me say just one thing. You're talking about if this is so then we have to solve it constitutionally. Now my question is that one of the things we have to consider is adding housing to that list of four things.

Mr. Guggenheim - I'm trying to boil it down so that my simple mind can understand it. If we put something in the constitution with a broad thrust then we don't have to worry about whether it's a community development agency or this kind of agency or that kind of agency. The legislature will decide what kind of agency it is. I'm trying to find out what is or isn't in the constitution. With this Section 13 it seems that our whole worry is about housing.

Mrs. Orfirer - No, it's not. We just came to this part of the minutes and that's where we got stopped in the discussion. Let's move on. Don Montgomery asked a question whether industries in the cities should be promoted or whether this trend of getting industry out of the cities should be followed and we discussed this in the terms of the effect on the tax base and revenues of the cities and that the cities needed to maintain the tax base within the cities. Julius raised the point of whether we wanted to reopen the preemption question. The consensus seemed to be that that should be that that should be at the end of the line of what we do. Then I mapped out a program for the future that consisted of research into what other states are doing in regard to tax abatement and Tony Russo said in relation to that a bill was passed five or six years ago for industrial and residential development, in urban renewal areas. I asked what happened to it.

Mr. Fry - It was a defective bill. It's never been used.

Mrs. Orfirer - Why hasn't it ever been used? I think we need to set up a seminar for city and county people to know what they are permitted to do.

Mr. Fry - We had a tremendous argument about it and I don't think anything ever happened. You see that every time you get into a tax abatement question You'll have the school boards, the OEA, and everyone who is getting the use of taxes slipping amendments in there and this may have happened to it. I don't know. I know it passed the House. I remember that Bob Netzley and Troy James were co-sponsors and that was as unlikely a combination as you could expect.

Mrs. Orfirer - Sue, do you feel that the municipal people are all aware of all they can do?

Sue Cave - I believe they are but some of them have chosen not to use them, because they possibly do not want to abide by the various restrictions imposed. It may be an unpopular issue in the community or they may not meet all the standards. There are any number of things.

Mr. Fry - What she is saying--our council would never have opened this matter of impacted cities. We had a group of citizens who wanted to do it. The Commission didn't want to get into something like this because they've got pressure from both sides once they start using the possible use of it.

Mr. Guggenheim - I believe Cincinnati is very much aware of all this, and they have played it every way. It could, but I don't know the details.

Mrs. Orfirer - All right. The next thing we discussed was tax increment financing, and Julius said that we have that too.

Mr. Nemeth - Tax increment financing is the basic tool that is used in Ohio today by anyone who is doing private redevelopment.

Mr. Fry - If it were public there would be no tax.

Mrs. Orfirer - Next we come to revenue bond financing. Many use it and many don't it says here.

Mr. Fry - That's true. This is a good tool but a lot of them don't want to. For example, we could issue revenue bonds for sewer expenses but the local government just want to get into it because they are more afraid of getting criticized if the revenues don't come up to take care of the bonds than instead of saying "Gee, we're going to open up new areas for industrial development. "

Mrs. Orfirer - O Kay. Let's finish this up.

Ann then discussed the Commission's proposals in relation to the lending of the credit of the state or a political subdivision being now prohibited. Our proposals would modify the present constitutional sections and replace that with authorization of the General Assembly to specify a public purpose.

Mr. Fry - and then they could use the full faith and credit of either the state government or the local government

Mrs. Orfirer - Yes.

Mr. Nemeth - That was what was intended by our recommendations but there are some people who are somewhat skeptical that we would accomplish the objectives. This is a point which I discussed at length with John Gotherman the other day. The

new Section 4 recommended by the Commission would read; "except as provided by law no local government entity of this state shall become a stockholder in, raise money for or loan its credit to or in aid of any joint stock company, corporation or association."

Mrs. Orfirer - How does that differ from what is there now?

Mr. Nemeth - Now there can be no exception provided by law. It's just an absolute prohibition. There are some people, however, who think that this section is not as clear as it should be. For one thing, it doesn't say anything about the state having to declare a public purpose, before it can allow a local government entity to do these things, and there is also a question as to whether or not the state could assume the debts of some of these local governmental entities under certain circumstances because we didn't recommend any change in Section 5 of Article VIII which says that the state shall never assume the debts of any city, county, town or township.

Mrs. Orfirer - Where were these people when this recommendation was drawn up?

Mr. Nemeth - Well, it either got by them or they were not looking at the problem in the same light which they are looking at it now.

Mr. Fry - Well, the policy question is rather easy for me. First, we want to give local government the power to take on some of these responsibilities but, secondly, I don't believe the state should assume the debts if any of the local governments don't live up to their responsibilities. I'm not concerned about the railroads or anyone else coming in and saying we're going to do this but we don't want a county somewhere going hog wild. Local governments should realize that if they are going to do this, they're going to have to pay off.

Mr. Nemeth - But what would happen if the state made a guarantee and there was a default and the state could not pick up the debt.

Mr. Fry - I believe that what would happen would be that the company handling the bonds would look to the particular county or community and say "Historically we can trust them or we cannot. We do not guarantee municipal bonds that are issued now." We don't guarantee school bonds, do we? I can see some small county put the state in a bind.

Mr. Guggenheim - Well, I don't know why we're getting into this. But we did recommend a change in Article VIII, section 4. "Except as provided by law the credit of the state . . ." So if that went through the state could loan its credit, become a stockholder, etc.

Mr. Nemeth - Or a local government entity could

Mrs. Orfirer - If the General Assembly said so.

Mr. Guggenheim - It doesn't say anything about local government in Section 4.

Mr. Nemeth - There is a bit of confusion here. In the recommendation here present Section 4 should be Section 6 and present Section 2 should be Section 4. The proposed Section 2 now says "No debt shall be contracted nor shall the credit of the state be used except for a public purpose declared by the General Assembly in the law authorizing such debt or use of credit." This would have the effect for one of permitting the General Assembly to declare a purpose and it would also allow the state to extend its credit to political subdivisions or to corporate entities, for the public purpose.

Mrs. Orfirer - Well, if it says that there why do you need it again in Section 4?

Mr. Nemeth - The new Section 4 doesn't apply to the state. The new Section 4 applies to local governments. I think one of John's comments on that was that he would like to see a self-executing provision as opposed to approval by the General Assembly.

Mrs. Orfirer - So would I.

Susan Cave - But all in all he didn't seem to have strong opposition.

Mr. Guggenheim - My question is if we have already created all these authorizations if we did, we don't have to do it here.

Mr. Nemeth - The intent of the recommendation was to make a private-public mix possible in every area which the General Assembly declared a public purpose, and this could include housing.

Mrs. Orfirer - And all the other things listed in Section 13 so it would supersede Section 13.

Mr. Nemeth - Well, I wouldn't say that it would supersede Section 13 because the revenue bonds portions of Section 13 would stay in the constitution, but the change would permit the General Assembly itself to say this and this constitutes a public purpose. There has been a tendency in Ohio to define every public purpose in the constitution even though there are cases which indicate that the Supreme Court would probably accept a legislative determination of what constitutes a public purpose, unless it was patently unreasonable. Bond counsel is just by nature very conservative and wanted to make sure that the bonds for a particular project would sell. They have always preferred to spell out public purpose specifically.

Mrs. Orfirer - Let me ask two questions. What sections are we talking about now?

Mr. Nemeth - New Sections 2 and 4.

Mrs. Orfirer - And you say that John would like to see Section 4 self-executing. Would that now require the spelling out of public purpose?

Susan Cave - He would like to take out of the hands of the General Assembly the definition of public purpose, whatever those additional public purposes may be. I am assuming that the public purposes that are listed are in the constitution forever or at least until that section is repealed.

Mrs. Orfirer - Is John's concern that the legislature would do nothing or too much?

Sue Cave - I think he just feels it would be easier and quicker to take advantage of it if it were self-executing, not having to wait for the legislative body.

Mr. Guggenheim - He just doesn't want to bother with the legislature and the problem of having to lobby everything through, every time.

Mrs. Orfirer - Not a bad point. Can we list this as something that we're interested in? And we want to take up?

Mr. Nemeth - But remember if we make any recommendations for change here we'll be making a recommendation counter to something that the Commission has already done.



Mr. Guggenheim - Maybe if Section 4 isn't drafted properly maybe it ought to be re-drafted.

Mr. Nemeth - I wouldn't say it isn't drafted properly. However it isn't drafted to the satisfaction of some elements such as the Municipal League.

Mr. Guggenheim - I would like to put on the docket the question of whether Section 4 as redrafted takes care of the old housing problem.

Mrs. Orfirer - It could if the legislature wished to.

Mr. Fry - Do you want to make it possible for the legislature to do it?

Mrs. Orfirer - But some people apparently wish to make it self-executing.

Mr. Guggenheim - What I'm trying to do is to save us some trouble in this subcommittee if we already have a broad authorization we don't have to beat our brains out.

Mrs. Orfirer - All right. I'd like to run through the Governor's proposals with you now. Is that what you'd like to do next? First, S. J. R. 6 dealing with tax exemptions for new plants for 12 years, including the income tax and one half of the ad valorem real property assessed. The exemption for critical need would be for 30 years. The second part of S.J.R. 6 says that this would apply to existing buildings which have not been used for the past couple of years and which are put back to use. But the exemption would differ somewhat.

Mr. Guggenheim - That this be done now by the legislature without the constitution?

Mr. Fry - Probably it could be. What he wants to do is to get it on the ballot.

Mr. Guggenheim - For the people to override the legislature.

Mr. Fry - That's it.

Mr. Guggenheim - From where we sit that would go to the question of whether we want to have this specific section in the constitution.

Mr. Fry - Our recommending it as a constitutional amendment to the legislature, I don't think would carry. From the complexion of the legislature, they are not going to enact these. If we say we recommend these this would give impetus to the petition drive, that they are going to put on.

Mr. Nemeth - I'm not sure we're going through these with the idea of putting our stamp of approval on them. We just want to make sure we know what is in them and how they could affect what we have done or are planning to do.

Mr. Fry - I have no objection to the Commission taking a position one way or the other on these. I think it's a healthy idea that we consider them. We could say it's a good idea, or it's a good idea except or that it conflicts with something else we are doing.

Mrs. Orfirer - Or offer something else instead.

Mr. Guggenheim - I thought what we could do is to include in our own recommendations what we like and not include things we didn't like without specifically pointing to his recommendations because that gets too political.

Mr. Fry - Exactly.

Mr. Nemeth - When you look at these proposals you come to the conclusion that except for one or two points there is nothing in them which could not be done under the present constitution. As Mr. Fry has said, the reason these were probably drawn up is to establish a framework within which the people could give their approval to a certain course of action and not necessarily because it's required from a constitutional viewpoint.

Mr. Guggenheim - The amendments of Sections 2 and 4 that we have proposed would permit the General Assembly to do a lot of the things which are listed here but what he has done is to list the specifics.

Mr. Fry - Right.

Mrs. Orfirer - And let's not forget his explanation, which is that he is not going back on his campaign promise not to raise taxes. He is going back to the people, to decide whether we're going to have more taxes for a certain purpose.

Mr. Guggenheim - These are all bonds?

Mrs. Orfirer - No. S.J.R. 6 wouldn't be. It's simply a tax abatement or tax exemption. The second proposal is S.J.R. 7. The proposal that relates to us here is that there is a proposal for \$85,000,000 for urban mass transportation and this is out of a total of \$1.6 billion. Most of this goes for highways. This is one place where we could say we want \$100,000,000 for mass transportation.

Mr. Guggenheim - This has nothing to do with the constitution, does it?

Mr. Fry - We have looked at it but we don't have to take a specific position on it.

Mr. Guggenheim - Charlie, my theory is that if it doesn't affect the constitution it isn't any of our business.

Mr. Fry - If we don't need a change, maybe we could say that. We don't need to say anything is what you are saying.

Mr. Guggenheim - Because I think we could get ourselves into a political situation.

Mrs. Orfirer - Let me remind you that we have often taken the position in the Commission or at least in this committee that while something may be able to be done the General Assembly if it hasn't been done and it is important enough maybe we should put it in the constitution. We have not used the criterion that it must be in the constitution.

Mr. Guggenheim - But in one of these he wants to raise the gas tax and in another he wants to raise the sales tax and he doesn't need anything in the constitution to raise the gas or sales taxes. Then he spells out what he wants to use this additional money for.

Mr. Fry - What he is trying to do is to lock in the electorate to say that they want to do it and to lock in the General Assembly to do it.

Mrs. Orfirer - Dick, what I want to do is lift out the purpose. I don't think the purpose is to lift the gas tax. I think the purpose is to provide for transportation, and he is using the gas tax as a method. Now we could use any method we wanted.

Mr. Guggenheim - take the gas tax and say we'll use it for transportation?

Mrs. Orfirer - The purpose is not to raise the gas tax . The purpose is to provide for transportation. Now we sat through several meetings in our Commission about changing Section 5a which earmarks the gasoline tax but

Mr. Guggenheim - So S.J.R. 7 would change the constitution.

Mr. Nemeth - It would provide that the additional 9/10ths of a cent gasoline tax raised under this resolution would be used only for its purposes. The moneys now earmarked under section 5a would continue to be earmarked as they are now.

Mr. Guggenheim - Then I take back what I said because without this amendment the legislature couldn't take this additional gasoline tax and spend it on urban mass transportation.

Mrs. Orfirer - that's right. What I'm saying is that we don't have to comment on the Governor's proposal at all if we don't want to. What we're saying is that there ought to be money for mass transportation, but we don't have to use his \$85,000,000 or anything else.

Mr. Fry - As I say, I know what my personal opinion is but I don't believe we ought to drag everyone on the Commission along, one way or the other, anything more than just making an explanatory statement but I think we should comment on it because I'm hopeful that November will have a lot of <sup>publicity on</sup> constitutional revision and the positions that this Commission takes will mean something.

Mr. Guggenheim - Let me back up a little. I remember at the hearings on section 5a the Department of Transportation or the highway lobby came in and said that none of the gasoline tax should be earmarked for any other purpose except highways. Here the Governor says we want to use part of the gasoline tax for urban mass transit, so we could recommend/<sup>an amendment</sup> opening up 5a, where we were before.

Mr. Fry - I would guess this, just knowing the Governor and the people who opposed any change in the constitution before, this thing has all been worked out. They are going to come in and say "yes, we are satisfied."

Mrs. Orfirer - It's a pittance.

Mr. Guggenheim - I understand. What I'm saying is that we backed off at that time because we didn't think it was politically saleable, for these other purposes. If we were really going to be consistent we'd simply now come back with that amendment and say that the gas tax can now be used for these other things.

Mrs. Orfirer - We'd never get it through.

Mr. Fry - I didn't back off because I thought it was politically unsaleable. I thought that the highways was one area we weren't in trouble with in state government and we probably ought to continue the way we ought to be doing.

Mrs. Orfirer - We have never really considered another approach.

Mr. Guggenheim - But now with the Governor laying it out for us, we might have an outside chance of getting this through.

Mrs. Orfirer - Why not use your own principle but don't use the gasoline tax that we're going to get so hung up on, just say "The legislature shall provide a tax source for mass transportation."

Mr. Fry - say "The Commission has heretofore considered and rejected the idea of bothering the amount that had been designated heretofore for highway purposes, that is the gas tax for highway purposes." This is a new proposal . We don't need constitutional approval for it but if the people want this then they can do it. I don't like using the constitution this way but it's a matter of practical politics. We can talk about the pristine quality of the constitution but if all the people want to do something, I don't feel we should stand in the way of it. You won't find this clause in the Model State Constitution.

Mrs. Orfirer - That doesn't bother me, Charlie. What bothers me is that he is going to create a new tax that is going to generate \$1.6 billion dollars out of which to appeal to the people he is tossing \$87,000,000 going for other things. Why can't we say that we're not going to touch the highway tax but this idea of providing a tax for mass transportation is a good one, and then perhaps draft something generally along the lines that the General Assembly--

Mr. Fry - I go along with what you're saying but I just think that if we try to take a position we're going to have everyone on that Commission hammered all of a sudden. The easy way out, as I see it, is to say that the Commission has considered the question of whether the taxes which have heretofore been levied on gasoline should be used for highway purposes. Now we have an entirely new proposal and we're willing to let the citizens of the state decide because it's not going to go through the legislature. It's going to get on by initiative petition.

Mrs. Orfirer - I don't think we have to say that we're willing

Mr. Guggenheim - I think that we only have to speak to what we want to do, what changes we recommend in the constitution.

Mrs. Orfirer - Yes, we are using this to provoke our own thinking and the possibilities.

Mr. Guggenheim - I don't see why the gas tax shouldn't go for things other than highways. We discussed this before the <sup>and</sup> most of the people felt that way. We could write something in the Constitution that would be basically the same and say "Additions to the tax tax could be used for the following purposes."

Mrs. Orfirer - Right, without spelling out.

Mr. Guggenheim - I don't think the concept is bad, except he has laid out the specifics. I would prefer that the specifics be laid out by the General Assembly.

Mr. Fry - Right. But right now you're not going to get it through the General Assembly. I hope we can make 1975 the year of constitutional revision.. I can see all these issues out there. Maybe we can ignore some of them but I think maybe we ought to comment along the lines you said. Starting about September in 1975 there will be a lot of people all over the state talking about constitutional revision and we ought to be looking to wrapping these things up. In talking to Governor Rhodes there is no question that he's going to have these things on the ballot.

Mrs. Orfirer - We took a position in the Commission, Charlie, I believe at the

very beginning that we were not going to react to other people's proposals, and that we were just going to make our own. But I think we could use the Governor's proposals as a way of stimulating our own thinking and perhaps modify it.

Mr. Guggenheim - I agree that we shouldn't take a position on specific proposals. I think we should just take things that we like and recommend that they become a part of the Constitution.

Mr. Fry - I agree with that.

Mrs. Orfirer - Julius, maybe one thing we could do is maybe discuss with Gene other sources of revenue for mass transportation and see if you can draft something for us to look at.

Mr. Nemeth -on section 5a?

Mrs. Orfirer - No, a new provision, something along the lines that the General Assembly shall provide another source of revenue for mass transportation, so that 5a would not be touched, but there would be a source somewhere.

Susan Cave - I believe that now that mass transit authorities by a vote of the people can increase the sales tax for this activity, up to a certain percentage.

Mr. Guggenheim - By county?

Mr. Fry - Depending on the territory of the transit authority.

Susan Cave - A bill was introduced originally to allow transit authorities to raise income tax or the sales tax for operating expenses but as the bill passed it only provided for an increase in the sales tax.

Mrs. Orfirer - All right. Now we come to H.J.R. 19. This is the one where everyone is going to go out and go to a skating rink or a golf course.

Mr. Nemeth - Now here you do have a constitutional point of law, because this resolution provides among other things that the funds "may be dispersed for participation with or grants or advancements to reimbursements of municipal or political corporations. Counties or political governmental subdivisions, state and local authorities, districts, agencies or institutions, the federal government, a profit or nonprofit corporation, organizations or institutions." Now this is a complete wipe-out of the provision that is in the constitution now, for these particular purposes.

Mr. Fry - If I thought you were a crooked politician I would think you were really setting it up, wouldn't you?

Mr. Guggenheim - This is murder, really.

Mr. Fry -Up in Massachusetts, I think they have been doing it for 100 years. That is giving money to private corporations, as you say for an ice skating rink.

Mr. Guggenheim - The funds can be dispersed. They don't even have to be loaned.

Mr. Fry - That's right.

Mr. Guggenheim - They could just give money to pay for part of urban renewal. This is the old shell game.

Mr. Nemeth - We're talking about \$2,500,000,000 which I think it about double the present state debt, or just a little less. And these are 30 year general obligation bonds.

Susan Cave - May I say that cities look upon this very favorably but only in the light that it was a proposal not/<sup>in the belief</sup> that it will ever see the light of day.  
all of these

Mr. Fry - This is the essence of giving everyone something and you get everyone backing it . They keep thinking well, what am I going to get?

Mrs. Orfirer - And it's a huge amount of money, a boondoggle. Is that the right word? Or is it rip-off?

Mr. Guggenheim - Well, it completely revokes sections 4 and 6 . Well, I am for altering sections 4 and 6 to some extent.

Mrs. Orfirer - But not obliterating them. So we come to H.J.R. 20 and 21. These I gather have nothing to do with the Governor.

Mr. Nemeth - 20 does and 21 doesn't.

Mrs. Orfirer - These authorize the state to issue revenue bonds, grants, guarantees for housing, health care, and the municipalities are authorized to do the same thing for residential housing.

Mr. Guggenheim - Housing covers a multitude of sins and this isn't just revenue bonds. It says make grants, guarantees or subsidies. Once again you can give direct money for housing. Housing can be almost anything.

Mrs. Orfirer - How does this differ from the broad grant of authority in H.J.R. 19?

Mr. Guggenheim - I think this was the one that was intended to save the nursing homes.

Mr. Fry - H.J.R. 19 does mention housing.

Mr. Guggenheim - But it doesn't say what kind of housing. In other words you could put low and middle income housing up and subsidize middle income housing. This could be a big deal.

Mr. Fry - Of course the federal government has tried this with various approaches and never yet has had a success in it.

Mr. Guggenheim - Not only that but a lot of guys have made an awful lot of money out of the federal government.

Mrs. Orfirer - May I ask a question? In H.J.R. 19 are the listed purposes meant to be just examples? Rather than limitations.?

Mr. Fry - This is the first time I've looked at it in such detail and although I'm basically in favor of it there is language there that lends itself to--I don't want to use the word dishonesty.

Mr. Guggenheim - They could get away with murder.

Mrs. Orfirer - It could be taken advantage of, let's put it that way. All right, what's your reaction to 20 and 21?

Mr. Guggenheim - I'm still not against putting something in the constitution that would give the legislature broad authority in these general fields, although maybe that's taking a risk too. I don't know.

Mr. Nemeth - Now the Municipal League's position on this is that they would like to see one of these two resolutions "go," because of their specific reference to housing. In our recommendations we tried to do away with the prohibitions but we didn't specifically mention housing, and these resolutions do.

Mrs. Orfirer - Well, that's easily remedied.

Mr. Fry - supposing one of these two were to "go", who would then prescribe the rules under which Housing would be made?

Mr. Nemeth - Under either resolution a board would be created .

Mr. Fry - But we've got a board promoting housing now.

Mr. Nemeth - But that's not in the Constitution.

Mr. Guggenheim - This goes on and on. I'm reading from part here. It says ". . . nonprofit or profit corporations or organizations . . . without limiting generally the foregoing such costs of capital improvements may improve acquisition, clearance or rehabilitation, construction or reconstruction, or improvement of real property or the resale or lease thereof to others at rentals intended to encourage development, restoration and rehabilitation" You know they could buy it for a million and sell it for \$800,000. This thing is really something the way it is written.

Mr. Fry - It's too bad because some of the things in here would be all right, but a couple of them would offer the opportunity for rip-off.

Mrs. Orfirer - We're not saying the Governor would rip-off, we're just saying that the door is open for rip-off, for somebody else.

Mr. Fry - I don't look at it only in terms of present <sup>administration</sup> but also for other administrations. We don't want to give the opportunity to anyone.

Mr. Guggenheim - You know what happened to some of the federal financing of housing for many years--and I don't know whether they have put an end to it. They could get a mortgage for more than what they paid for the property. That sort of thing could readily be done with this.

Mr. Nemeth - We shouldn't forget what the present status of joint resolutions of 20 and 21 is. Two different versions have passed the House and the Senate, so it's left to a conference committee and it came up with Am. Sub. H.J.R. 21. It is conceptually different from the others. Instead of adding a new provision to the Constitution as both 20 and 21 would have done what the joint resolution substitute does is to open up Sections 4 and 6 and specifically permit the extension of credit for housing, nursing homes and extended care <sup>facilities.</sup> It would require whatever loans or guarantees were made, these would only to "financial institutions," which means that the private sector would have to be involved, in any program that was set up the state agency would not directly make a loan or a guarantee.



Mrs. Orfirer - You mean the amended substitute resolution provides more safeguards than 20 or 21?

Mr. Nemeth - The substitute is more conservative. If anything passes the legislature, it will probably be this amended substitute. If the Governor puts it on the ballot/<sup>he will probably</sup> go with the original proposal. Now I have heard that at least one of the resolutions has been changed to some extent in the last couple of days but I don't know which one it is. I don't think there will be a shift, basic approach maybe a shift in emphasis.

Mr. Guggenheim - This doesn't have too much to do with us except to the extent that we might alter sections 4 and 6 to provide more power to the legislature.

Mr. Nemeth - Of course that would be a possibility. Our recommendations on sections 4 and 6 are now before the legislature as a matter of fact the General Assembly itself could take those proposals and amend them to include what is contemplated by this amended substitute.

Mr. Fry - That's an idea.

Mrs. Orfirer - You know what might be very interesting? We might have the Governor's proposals on by initiative petition and the legislative proposal on also.

Mr. Fry - I just have the feeling that we are not going to get as many of our own proposals on as we would like to. However, I may be wrong. We just don't have the people in the legislature who are "gung-ho" for getting them through.

Mr. Nemeth - We seem to be getting preempted in a number of areas or "leap-frogged"

Mr. Fry - The few things that we have gotten through before, we've had someone say "Well, we're going to do it and we got all those through."

Mrs. Orfirer - We haven't gotten the publicity, we haven't gone to the newspapers and we haven't done any of the things which I think we should be doing.

Mr. Fry - Which is a big consideration and I would hope that we address ourselves to it tomorrow. We are at the point now where the legislature could go home by the first of July. When they get to the budget bill which they will do on Tuesday they are getting toward the end of the session, and we have to get these things passed if we're going to get them on the November ballot.

Mrs. Orfirer - I don't know why we're not getting the publicity out or getting the push to get these things through the legislature.

Mr. Fry - Hopefully, it would be the majority party because they are the ones who can make things happen. If we want to get all of our work into a form where the people can vote on it it has to be on there in November, because if we don't I would think that our being continued as a group into 1976 is remote. If I were sitting in the legislature I would say "these people have been sitting over there for four or five years and what's happened?"

Mrs. Orfirer - Well, it isn't our fault that things haven't happened.

Mr. Fry - I know it isn't but you see they don't realize that. They have so many things going at them

Mrs. Orfirer - Well, let's make the plans as to whom we want at the next meeting. I think we ought to have some people come in and testify, and discuss things with us. What kinds of information do we want? And once we decide, whom should we get?

Mr. Nemeth - Someone from the Department of Economic and Community Development

Mr. Fry - I would suggest we get the local director of HUD. He is articulate and he likes to appear before legislative committees .

Mrs. Orfirer - We had a list, some place, of people we said we were going to hear from.

Mr. Nemeth - Yes - development officials, housing officials, etc. Chambers of Commerce, growth groups, etc.

Mr. Fry - We could have a week's hearing with those people

Mrs. Orfirer - We might not be able to do all this at one meeting.

Mr. Guggenheim - What I'm trying to separate out is what they can do under the present Constitution without getting bogged down. You recall the problem and the red tape we are having because of the statutory set-up

Mrs. ORfirer - But if it isn't being provided by the legislature we may need to step in and do it. If they're tied up in statutes maybe we have to come in and

Mr. Fry - I'd like to keep this in the context of what we can do in the Constitution We could bring in half a dozen people from Clark County who would spend an hour apiece telling you about the problems they have with building and planning, etc. But we can't deal with it on a constitutional level other than to say that we are going to delegate power to either local governments or your legislature.

Mrs. Orfirer - Yes, but we can't decide what kind of power we need to put in the Constitution until we know what kind of problems they're having.

Mr. Fry - Why not send out a questionnaire to a representative group and address ourselves to those problems?

Mrs. Orfirer - Well, if we could get just one knowledgeable person in each one of these categories--especially if he has some knowledge of the Constitution, that would be very nice.

Ohio Constitutional Revision Commission  
Local Government Committee  
June 10, 1975

### Summary

Present at a meeting of the Local Government Committee on June 10 were Committee members Mrs. Orfirer, chairman, Messrs. Guggenheim, Wilson, Montgomery, Fry, Russo, Unger, and staff member Mr. Nemeth. The guest speakers were Mr. Jack Reardon, Area Coordinator, Columbus Area Office, HUD; Mr. Thomas Daley, Community Development Specialist, Division of Community Development, Ohio DECD; Mr. Jack Huddle, Director of Development, City of Columbus, and Mr. William Losoncy, Executive Secretary, Ohio Housing Development Board.

Mrs. Orfirer - The Local Government Committee has completed its work on local government powers and structure - municipalities, townships, and counties - and felt that there was a whole area of the problems of metropolitan areas, primarily the core cities - that needed solutions. We wish to investigate whether there are possible constitutional solutions - remedial steps that can be taken in the Constitution. We have just started, and are still learning about some of the programs and laws that are in existence to help solve some of these problems. We welcome your comments on the problems as you see them, the solutions as you see them, what kinds of help you feel might be given constitutionally. Are there legal obstacles to the work you are trying to do? Financing methods, tax policies, in relation to other states and their use of them as they relate to our Constitution. We don't want to limit you in any way, just give you an idea what we are doing, and we are here to hear from you.

Mr. Reardon - I am happy to have this opportunity to appear before you to outline the Housing and Community Development Act of 1974 and some of the problems in Ohio resulting from this new law. It contains 8 titles covering a variety of subjects. Title I covers community development activities; Title II assisted housing; Title III mortgage credit assistance; Title IV comprehensive planning; Title V rural housing; Title VI mobile home construction and safety standards; Title VII consumer home mortgage assistance; and Title VIII, a number of things. The two most important are Titles I and II. Title I, dealing with the community development activities of the department, was drastically altered by the passage of the act. The act consolidated and replaced our traditional categorical programs of open space, urban beautification, historic preservation, public facility loans, water and sewer and public facility grants, urban renewal, neighborhood development programs, model cities programs, and the rehabilitation loans and grants programs. These programs have been replaced with a community development block grant program. The act authorizes \$2.5 billion this fiscal year nationwide, and \$2.9 billion each in fiscal years 1976 and 1977. The program authorizes 100% grants to states, cities, counties, and other units of general local government. For Ohio, the allocation of these funds results in approximately \$130 million grant funds this fiscal year. The funds are divided so that 80% goes to communities in Standard Metropolitan Statistical Areas - urban areas - and 20% to a non-metropolitan or rural areas. The major share goes to "entitled" communities. These are communities with populations of 50,000 or more

which have a history of involvement with urban renewal programs. In addition to the entitled cities, the program authorizes funds to urban counties and communities outside of SMSAs which are not entitled. The original amount estimated for the urban counties was underestimated this fiscal year, and no funds will be available for the nonentitled communities. Six urban counties will receive funds here in Ohio. In addition, \$5.4 million was available to the rural communities. Some of the entitled communities have already been approved and one urban county has been approved. Applications from the other communities and counties are currently being reviewed. The program authorizes activities that were formerly eligible under the variety of categorical programs. In order for a community to receive funds it must submit an application consisting of 1) a three-year plan identifying its community development needs and objectives and a strategy to meet these needs; 2) a program of activities to meet these needs and the resources it intends to use; 3) a description of the programs to eliminate or prevent slums or blight and deterioration, and programs to provide community facilities, public improvements, including health and social services where necessary and appropriate; 4) the housing assistance plan.

Many communities in Ohio are faced with a problem as a result of the passage of the act in that the Ohio Constitution hinders the development of a locally-funded rehabilitation loan program to replace the "312 loan program". This was one of our more successful and popular activities. Under it, the federal government loaned funds directly to individual homeowners to make necessary improvements so that their homes would meet the requirements of local codes. These federal loans were made in connection with urban renewal activities in specific areas of cities designated for rehabilitation or concentrated code enforcement. Since the loans were made directly by the federal government, the activities were not affected by Section 6 of Article VIII of the Ohio Constitution which, as you know, prohibits municipalities and public corporations from making or extending aid to individuals, companies, corporations or associations. Not all communities have interpreted Section 6 to preclude them from establishing such direct loan programs. But many are faced with a dilemma of attempting to continue an activity which is allowed under the federal law but which is hindered by the Ohio Constitution.

Mr. Fry - Does "direct loans" mean they go directly from the federal government to the individual homeowner? How are the repayments handled?

Mr. Reardon - It was a direct federal loan, and the servicing was handled by a private mortgage company. I think it was Kissel Mortgage that handled it here in Ohio.

Mr. Fry - For the entire state?

Mr. Reardon - Yes.

Mr. Fry - What communities in Ohio participated?

Mr. Reardon - The 312 loan program covered Cleveland, Akron, Canton, -- at least 40 cities were involved.

Mr. Fry - What was the volume? Was it significant?

Mr. Reardon - I'm sorry, I can't give an exact figure.

Mr. Fry - Let's take Cleveland. How many units were rehabilitated as a result of this?

Mr. Huddle - In Columbus, I believe it was in the vicinity of \$5,000,000 worth. Somewhere between \$6,000 and \$10,000 per unit. That would be five to six hundred units.

Mr. Guggenheim - I don't understand. Were these loans made directly to the homeowner? Where did the city come in?

Mr. Reardon - It was done in conjunction with their urban renewal activities. A city would designate an area for either rehabilitation or concentrated code enforcement. These were areas that did not require total clearance to prevent slum and blight. It was thought that with rehabilitation and some major capital improvements such as curbs, gutters, street lighting, replacing water and sewer lines, street repairing, and beautification-type activities, this would preclude the further deterioration of the area.

Guggenheim - The city designated the areas?

Reardon - Yes.

Guggenheim - And there is nothing in the Ohio Constitution that prohibits the federal government from loaning directly to homeowners, is there?

Orfirer - No, that problem comes about because of the new act. Under it, the money goes directly to the cities.

McNaughton - And becomes local money, according to the legal opinion from the general counsel's office.

Reardon - Once HUD gives the money to the city or county or whatever it may be, it becomes local money. It is no longer federal money.

Huddle - If the city wants to use some of these block grant monies to make rehabilitation loans, to bring property up to minimum code standards, the city cannot do it because the Ohio Constitution will not permit the city to use the money for rehabilitation loans, because it is the city's money.

Unger - Is this because of the constitutional provision that does not include housing as a public purpose?

Reardon - Some communities have found schemes by which they think they can go ahead with these activities. Cleveland is one of them.

McNaughton - Cleveland has some proposals for spending the money. Decisions are made strictly on the facts of each case, with no precedent being set for any other. From a legal point of view, we normally take the certification of local counsel, but we have to look behind

these things now. The intent of the act was to get the federal government out of the housing business and get the money down on the local level, and the problem now is that we are having constitutional and statutory problems in various states -- Ohio being one of them -- on how to distribute the money once they have it.

Montgomery - Does Governor Rhodes' housing proposal address itself to this issue?

McNaughton - I'm not so familiar with it and I don't really know. Does it deal with the public purpose issue?

Nemeth - I'm not sure myself whether it would deal with this particular problem.

Russo - Isn't this program in effect throughout the state of Ohio already - money being spent although you say it may be unconstitutional?

McNaughton - For housing rehabilitation loans. We're talking about a specific purpose here.

Orfirer - May I clarify one thing -- the faith and credit problem? If it does affect this particular title, let's look at it right here.

There was discussion of the Ohio Housing Development Board, perhaps issuing bonds to be repaid partly with money received from the federal government while it could not also pledge the faith and credit of the state at the same time.

McNaughton - Frankly, without the full faith and credit of the U.S. government, I don't know what those bonds would be worth on the market. That's what we are trying to say. Maybe from a legal point of view it might be alright, but pragmatically speaking, what are you going to do with the paper?

Reardon - There are two levels of problems. One level is with a state housing finance program. That deals with the preclusions of the state lending its credit. Section 6 deals with the local community lending its credit.

Russo - What have other states done?

Reardon - There are only a few states that have a similar provision in their constitutions.

Montgomery - I thought most states had a similar provision in their constitutions.

Nemeth - Quite a few do. It depends on the interpretation of particular language by the supreme court of the state. Different courts have come up with different conclusions.

Montgomery - That language expresses a pretty general concept, that you cannot use public money for private purposes.

Reardon - We only seem to have a problem in four or five states. Other states have interpreted their own constitutions and statutes differently.



Title II is the assisted housing section of the act, its most important feature being Section 8, which establishes the housing assistance payments program. This program authorizes a rent-assistance payment to owners on behalf of eligible tenants. Three types of units are involved: Existing units which are already decent, safe and sanitary; new units that will be constructed specifically for the program, and units requiring substantial rehabilitation in order to be decent, safe and sanitary. Two of the most important aspects of section 8 are these housing assistance plans that we spoke of a few minutes ago, and HUD's advertising for proposals. Each community submitting an application for community development block grants must submit a housing assistance plan as part of its application. The plan does four things - it surveys their housing stock, it assesses their need for assisted housing, it provides an annual goal of the number and type of units to be assisted and it provides the general location for this assistance. Each state received a formula allocation. Ohio's share is \$43 million. Each county in Ohio was given a "target share" for planning purpose. The plans tell us how to utilize the portion of these rent supplement programs - these housing assistance funds allocated for a specific community. They tell us whether the assistance should be in the form of new units, rehabilitated units, or existing units, and how much of the assistance should go for families and how much for the elderly or the handicapped. For areas that are not covered by these housing assistance plans, our economic and market analysis division provides this input on demographic and market analysis data. When it is determined that new construction or substantial rehabilitation is needed in a specific area on the basis of housing assistance plans and/or this demographic and market data, we in the HUD office will advertise for housing to provide the type of housing that's called for. In those communities where the need is for existing housing, HUD will solicit applications from public housing agencies to administer the existing phase of the program for us. Under this phase of the program, these public housing agencies will advertise for tenants who, once they're certified, will seek a unit in the private market - they will go out and find a unit that they like. If the owner is willing, the owner and the tenant enter into a lease and the public housing agency, after it has inspected the units, will enter into a housing assistance payment contract with the owner. The tenant will pay 15% to 25% of his income and HUD will pay the difference to these housing assistance units.

Now, this section 8 creates a second problem in Ohio that is that the definition of "public housing agency" is inconsistent with the Ohio statutes governing local housing authorities. The public housing agency is defined in the federal regulations as any state, county, municipality, or governmental entity or public body or agency or instrumentality thereof which is authorized to engage in or assist in the development or operation of housing for low income persons or low income families. The problem is that many governmental bodies in a county may meet the federal definition, in addition to the traditional local housing authorities. Now, thus far the Attorney General has refused to consider the question of who in the state constitutes a public housing agency. This may delay the development of this program in certain areas.



Mr. McNaughton - In the first place, this is not a constitutional problem. This is a statutory problem. But I would like to bring it up because it needs to be clarified. Our definition is broad. Anything to do with the powers of political subdivisions in Ohio doesn't make a difference. But it's our view, and we have so indicated to the General Counsel and he's agreed, that ORC 3735.27 seems to indicate -- and we've taken the position -- that only local housing authorities bound to that statute or empowered to administer, manage and operate low-rent housing. Now, when Jack says the Attorney General has "refused", that's not exactly correct.

Mr. Fry - You are referring to the Ohio Attorney General?

Mr. McNaughton - The Ohio Attorney General. Mr. McCleron of the Warren Metropolitan Housing Authority wrote for an opinion, but I felt that he wasn't a proper party. We asked him to direct his question to the Housing Board, which I think is a state office, and I believe the Attorney General would answer to Board. Once we get a determination of that, we'll know better where we stand. Right now, we've taken a position that only those people under that statute can operate low rent housing. But our regulations are so broad that whomever the State of Ohio says is a proper body, they can operate it as far as we are concerned.

Mr. Fry - We have enough of a section in the Ohio Code which refers to public housing authority. It would seem to me that if it takes a statutory change, this would be the easiest way to do it.

Mr. McNaughton - I realize, Charles, that this is maybe not the forum for this discussion.

Mr. Fry - It would be my impression that this doesn't involve the Constitution.

Mr. McNaughton - I know that. I discussed this with Julius, and he said that we could bring this to your attention for whatever it may be worth. If we once get an Attorney General's opinion issued, then perhaps the Legislature might act. Until that time, our hands will be somewhat tied.

Mr. Montgomery - Who is the legal counsel for the state agency and the local prosecutor?

Mr. McNaughton - As I understand it, only the county prosecutor or a state official can ask for an Attorney General's opinion.

Mr. Montgomery - Traditionally, the request for opinions comes through local prosecuting attorneys.

Mr. McNaughton - Or a state official.

Mr. McCleron did write on June 6 to Mr. Dragelevitch, Trumbull County Prosecuting Attorney, asking him to submit it. Maybe he wouldn't.

Mr. Montgomery - The local prosecutor did not submit it?

Mr. McNaughton - We don't know yet. All we have is a copy of the letter that Mr. McCleron wrote.

Mr. Montgomery - They do it as a matter of courtesy. It ought to be a routine thing.

Mr. Unger - Going back to the types of houses you were talking about. You talked about subsidies to existing housing, and were you going to go on now to subsidies for new housing or subsidies for rehabilitated housing? And is this subsidy to existing housing prohibited or restricted in any way by constitutional provisions now?

Mr. Reardon - No, there appear to be no barriers to this operation in the state. We will get the one little problem when it comes to the state of how we finance its agency. But under the new construction and rehabilitation phase of the program, we will advertise for the type of housing, and proposals will come in from private developers and local public housing agencies to administer the program. We will then review those proposals. We will send all the proposals that come in to the executives of the respective communities in which the proposals are to be located, and based upon their comments and our review we will determine which are the best proposals for the units that we were advertising for. Then the owners, the developers, and the Department of Housing and Urban Development will enter into agreements to enter construction assistance payments contracts and, subsequent to construction, housing assistance payments contracts. Then the owner will be soliciting their tenants and certifying their eligibility and we will be paying the housing assistance payment directly to the owner.

Mr. Unger - You'll pay directly from the federal government under the program?

Mr. Reardon - Yes.

Mr. Unger - And not through a municipality or other local government?

Mr. Reardon - There is one instance where we will pay through the public housing agency, and that will be in a situation where a developer choses to submit his proposal in tandem with a public housing agency. In that situation then, we will enter into our traditional annual contributions contract with the housing authority. It in turn will enter into the housing assistance payments contract with the owner. This will be somewhat different than our traditional leasing program where the housing authority pays this payment directly to the owner.

Mr. Nemeth - Do you have any doubt as to the constitutionality of this latter procedure?

Mr. Reardon - No.

Mrs. Orfirer - I think in the interests of time we ought to move on.

Mr. Reardon - Madam Chairman, if I may just make this point, the reason we brought this up is because we think it's important. Although \$43 million may not seem like a lot of money to a state, this is the second largest allocation of section 8 money in the United States. Only New York has a larger allocation, something like \$47 or \$48 million.

Mr. Fry - That's because we have more cities than most states.

Mr. Reardon - That's correct.

Another feature of the section 8 program is the involvement of the state housing finance agency in the administration of the section 8 program. In other states, such as Michigan, over 50% of the allocation to the state for these housing assistance payments will be administered by the state housing finance agencies. The Ohio Housing Development Board that was established by H. B. 870 could be a major force in delivering this assistance for the low income families and the elderly. However, Section 4 of Article VIII does not allow the state to lend its credit for the purpose of developing low-income housing. This hinders the sale of bonds to finance the activities authorized by House Bill 870 and the operation of the Board. Currently, \$43 million is authorized under section 8. This must be administered entirely by the HUD staff of the Columbus Area Office. This \$43 million represents approximately 10,000 new construction units, 2,000 substantially rehabilitated units and 2,000 existing units. The volume of this activity taxes the capacity of our office. The housing needs of the State of Ohio could better be served if the State Housing Development Board were able to assume a greater role in the program. In the state of Michigan, for example, the Michigan State Housing Development Authority will produce over 17,000 units of housing this year. This represents 22,000 jobs and about \$18 million in additional tax revenue.

Mr. Fry - This is an area where we have to look at the Governor's proposal, because this goes right to what he's proposing and I think the staff or someone is going to have to look at what HUD is saying in light of what we know is going to be on the ballot in November, if we are going to take a position on it.

Mrs. Orfirer - Let me ask a question if I may. Julius, old Section 13, creating jobs and so forth, doesn't it pertain here?

Mr. Nemeth - The purposes for which money can be expended or bonds issued under Section 13 are listed there and housing isn't one of those purposes.

Mr. Unger - But that kind of amendment to the Constitution would solve this problem if you included housing.

Mr. Montgomery - Preservation and creation of jobs is not broad enough to cover housing. I don't think the bond counsel would approve it.

Mr. Nemeth - Not under Section 13.

Mr. Montgomery - I agree. You'd have to get a commercial...

Mr. Fry - I think the proposal is going to go right with what HUD is talking about, and we have to look at it.

Mr. Montgomery - I just assume the Governor's draftsman has considered this. But I've never been able to get any answers from either side as

to whether this has been reconciled.

Mr. Fry - This is one that is going to "go".

Mr. Montgomery - But it would be a shame if it went off ad hoc and didn't cover this issue.

Mr. Unger - Isn't the direct answer just to add the word "housing" to that Section 13? I don't mean is it practical or not, but wouldn't that be directly a way of solving these problems?

Mr. Nemeth - That's one approach, but I'm not sure bond counsel would be happy with that.

Mr. Montgomery - These are industrial revenue bonds you have to remember.

Mr. Nemeth - There are several other approaches. One would be to amend Sections 4 and 6 of Article VIII, which the Commission has already proposed, removing the restrictions without specifically mentioning housing. Or adding a special exemption for housing purposes to the Constitution in addition to Sections 4 and 6, and 13 for that matter.

Mr. Unger - Why wouldn't declaring housing a public purpose as part of 13 satisfy bond counsel?

Mr. Nemeth - I'm not prepared to say that it wouldn't.

Mr. Montgomery - It might.

Mr. Nemeth - But they are conservative by nature and they like to have things pretty well down exactly to suit them.

Mr. Montgomery - It's not practical.

Mr. Unger - The major concern was that these other things were specifically named and housing was not and for that reason housing was the thing that was always in question because it wasn't specifically declared a public purpose.

Mr. Nemeth - That's one of the reasons, yes. But I'm not sure, Mr. Unger, that they would be happiest if that amendment were made. It's possible that we could "run it by them" and see what they say.

Mrs. Orfirer - Would there be other purposes for which we would need housing listed there? Or, if we could get 4 and 6 as we have suggested, and thereby settle a particular housing problem, would that solve a whole spectrum of housing problems? We don't have to decide this tonight, but I think this is something that we have to decide.

Mr. Montgomery - Industrial revenue bonds do not lend themselves to this field is what I'm saying. It's a different kind of financing, and even small plants that just create a few jobs can't use industrial revenue bonds because there is too much red tape, the underwriting is too expensive, it's not a practical financing mechanism for them.

Mr. Unger - These aren't industrial revenue bonds.

Mr. Montgomery - No, they're separate, and I think they should be addressed separately.

Mr. Unger - I would like to scout the idea that the mere addition of the one word, "housing", in that section would do. One other question. What if we put an amendment in creating an exemption for municipalities for the expenditure of federal funds pursuant to federal programs? That would cover a multitude of sins.

There were some comments about that being too broad.

Mr. Reardon - One thing that might be of benefit is that if the state housing finance agency has the ability to underwrite its own projects, it has a much easier processing procedure. The relationship with the federal government is much less involved, and it has a great deal more discretion in how it administers the funds that have been set aside for the state. Now, if a project ends up so that it requires federal mortgage insurance in order to be feasible, then finance agency's relationship to the federal government is much closer to the normal relationship of any developer. So in this processing it might be advantageous to keep this in mind.

Mr. Fry - I think, Madam Chairman, the answer to the question posed by Mr. Unger is that if we put housing in Section 13 as a public purpose, we might make it so broad that we'd have trouble getting it adopted as a constitutional amendment. I think that the purpose of those who are espousing the Governor's proposal is that they're tying it down to housing for specific purposes. But if you can put "housing" in -- "housing" can include hotel rooms, without any relationship to the nature of the people who will be provided housing, or the quality or the cost or anything else. I think that this might be a consideration. I don't know. It may be better to let the argument come in the Legislature -- simply change the Constitution and let the argument, if it was going to be, come in the Legislature.

Mr. Unger - I think that there may be a lot of practical reasons why we don't want to try and put housing in now. It makes it a difficult thing to achieve that way instead of some other way. But it's my belief that if you did, it would solve this problem.

Mr. Fry - I think you are right and I would agree with that.

Mr. Unger - And I want to ask Mr. Reardon, if we did have housing cleared as a public purpose, would we still have this other problem you raised of Ohio through a state agency like the Ohio Housing Development Board - would it then be able to carry out these functions of loaning money and financing housing in the state?

Mr. Reardon - I would not be able to give you an answer because the problem is that the changing of one word may allow certain activities that were envisioned under H.B. 870, but it would not allow the ready sale of the bonds, and that is the key because in order for the program to be financially feasible, there must be enough spread between what

the state can sell its financing for and what's available on the private market in order to attract the developers into utilizing the state's program and thereby increasing the number of low income housing programs.

Mr. Unger - Then you would recommend that in addition to declaring housing to be a public purpose, there be a provision specifically enabling the state to do this financial work with housing, is that right?

Mr. McNaughten - I'm not quite following you here because our regulations are so broad.

Mr. Unger - I understand that. My meaning was, would your purposes be achieved, the purposes that Mr. Reardon mentioned, that instead of administering the finance operations directly from the HUD office, instead, as in other states, Ohio would be able to administer them through a state agency? Would that help?

Mr. Reardon - Yes, immensely.

Mr. Reardon - Now, the remaining titles in the Housing and Community Development Act are mainly housekeeping -- increasing dollar ceilings, etcetera, and I'll mention them briefly, only if you would like to know what the full range of the act is. There are no further questions that we have come across in these other sections that have a direct constitutional impact.

Mrs. Orfirer - Then I think we won't right now, Mr. Reardon. We will be able to get that information from you to be sent out to everyone.

Mr. Daley - There is a question while Mr. Reardon is here. There has been a question raised in one of the client communities. A township wanted to apply, in fact, it applied for a block grant to do a project with a rural program. And I was advised by some HUD officials that the Constitution of the state of Ohio, in creating townships, is so weak that townships may not be eligible for block grants. I would like to know if there has been any position taken on that by HUD and if so, I think right now is the time to bring it up.

Mr. Reardon - In order for any community to be eligible, it must have the local power and authority to do the things that are called for. I believe there was question in Ohio as to whether or not a township had these powers by statute.

The question that you are talking about is before the General Counsel in Washington. The Community Development Act, in my view, gives a township a stronger position to be eligible.

Mr. McNaughten - But it's going to have to be eligible under the "non-entitled" funds, Jack. There's not enough population.

Mr. Daley - The only thing I was concerned about is the constitutional law indicating that township government is weak and may not be eligible



for block grant right now.

Mrs. Orfirer - Again, I think that the powers of townships are not prescribed in the Constitution.

Mr. Fry - And the point is that the counties have the power and the municipalities have the power. If we don't want to delegate them to the townships, one way or the other...

Mr. Reardon - They are going to have to work in conjunction with the counties because the population would not qualify them as far as we are concerned. In order for a county to be eligible, it must have a population of 200,000 or more, independent of the entitled cities. Now that population can include these unincorporated areas in the townships, and, of course, any communities that wish to lend their population to the county for the purpose of this activity.

Mrs. Orfirer - Well, one of your purposes, as I understand, is to use broad general purpose units of government and to create these kinds of inter-governmental relations, rather than enhancing the existence of units of government that aren't really viable for your purpose.

Mr. McNaughten - The intent of this entire act of 1974 is to get this money out of the federal government down to the local level, for them to handle administratively and in every way.

Mrs. Orfirer - Mr. McNaughten, before we move on, is there anything further that you have to add?

Mr. McNaughten - No, but I certainly appreciate your invitation.

Mrs. Orfirer - Well, we appreciate your coming and I don't mean to ride rough-shod, but I think we do have to concentrate on the tasks at hand, because it always is very fascinating, and it's always easy, to wander down the path and get away from what our particular job is. We'd like to have you stay and join in the rest of the evening's discussion if you will.

The next speaker was Mr. Thomas Daley, a Community Development Specialist with the Ohio Department of Economic and Community Development.

Mr. Daley -- My job primarily is to provide technical assistance to communities in the areas of community development, which covers a broad spectrum. You have mentioned townships and small communities and that's primarily what I deal with. Because major communities like Columbus and some of these other places have people like Jack Huddle, and they don't need me. But in the smaller communities, they do need this assistance. I think in smaller communities there is the problem of doing things to improve the community. In the first place, they do not have the wherewithall to do it, and in the second place, they are really virtually cut out of the federal program because the big cities, who do have a lot of wherewithall, will take up a little more wherewithall. Of course the cost is greater, but still the little community is left out to do things by itself. Now, there is a vehicle



and there is a way and we have been building things in Ohio. I covered some 37 communities throughout the State of Ohio and that doesn't mean visiting them once. I mean I constantly work all over the state.

Mrs. Orfirer - May I interrupt just one moment to clarify this. Is this villages as well as townships?

Mr. Daley - The cities -- the city of Mansfield has 50,000 population-- they needed some help there, too.

Mrs. Orfirer - Okay, I just wanted to find that out.

Mr. Daley - I'm not limited to small communities. It's just that the major cities such as Cincinnati, Cleveland, and Columbus have their development agencies, very competent people, and they don't need the type of expertise that I can provide. There is a vehicle, however. I have something prepared so I'd like to go through it if I could. There is an evergrowing emphasis on community improvement including, but not limited to housing, recreation, environment, environmental protection, saving the cities' central and commercial core, also villages, bringing people back into the central city, conservation of natural fuel resources, and mass transportation, utilization of the sun's rays in solar heating and industrial development. Local governmental and civic groups are becoming more sensitive to the need for a vehicle that will act as a catalyst to foster economic development through balanced community development. And I think we are going to get to what Jack was talking about and what you were talking about. To have commerce and industry, of course you need people to work in the commerce and industry, and you need consumers. Consumers are people, and people need more than jobs. They need decent housing, they need decent neighborhoods to raise children, they need good schools, adequate recreation facilities, good government services. Good government services require adequate modern facilities. The vehicle needed and desired is governmental in nature, that can act as an agent for local governments to provide financing and can issue governmental bonds - our tax exempt bonds, yet not encumber the local bonding agent's capabilities. The bond to be issued would be secured by the community improvement vehicle through whatever assets it can muster, assets or securities or backing. This vehicle, though governmental in nature, needs to work in concert with private citizens that are directly concerned about particular community needs for which this vehicle would be created. And the appropriate vehicle, in my opinion, would be the community improvement corporation organized under Chapter 1724 of the Ohio Revised Code. Community improvement corporations throughout the state of Ohio have done a commendable job in bringing in new and expanding industries in Ohio. But successful CIC's are located in viable communities that provide all the other necessary amenities. And this is where the weakness is for prosperous and healthy economic growth. Industry will not move into a declining community. In fact, both industry and commerce will start moving out of a growing, unhealthy community. When I say "growing", that is a negative growing. Communities have wanted to utilize their CIC's to improve central business districts, but the central business district that needs to be improved includes housing. They want to build libraries, city halls, and city complexes such as Gahanna has done and lease these to

cities so they can improve the thing without encumbering the city's tax bond abilities. They want to develop recreation areas around airports, industrial parks, and central business districts and within central business districts. I am presently working with the following cities in creating CIC's to improve and restore central business districts, but housing is the question, and the recreation needed to make the central business district still is a problem: Mansfield, Portsmouth, Brian, Mount Vernon -- and the list is still growing. I believe that by broadening the scope and power of the CIC, Ohio will have taken an important step forward in its quest for healthy economic growth and development, because they are all inter-related: the housing, along with the recreation, along with the civic buildings, the community centers and the neighborhood centers. In addition to existing powers of the CIC's, local governments should be permitted under the state constitution and by law, to do the following with CIC's: To develop housing, to develop recreational facilities; to develop, lease, and/or sell public buildings and grounds to public entities or their agents or the people for whom they are agents; to establish special taxing districts for the elimination of blight, and for the promotion of residential and commercial rehabilitation and rehabilitate development; to incorporate as a community urban redevelopment corporation under Chapter 1728 of the Ohio Revised Code in connection with an Impacted Cities program; and be empowered to receive state and federal loans and grants on behalf of their founders for community improvement programs. In the City of Columbus, you wouldn't need this, but in a small city where they don't have the professionalism, they would need this, and the CIC could hire a professional to do this. The city could delegate this power. I believe the above adjustments in the powers could be granted by local governments to their CIC's as viable instruments to bring together existing and new programs as seen on the horizon for community development. The state of Indiana has such a vehicle -- it's called a redevelopment commission, and its scope has recently been broadened from what was limited to cities to include county governments. I believe this is a very critical matter to dying communities. I'm talking about the small communities that really want to help themselves and could. I think this vehicle could help them. Something is needed, and I think we have the vehicle and it just needs improving to make it work. It has the optimum potential for the public good. I'll be happy to answer any question that you might have.

Mrs. Orfirer - Are there any questions of Mr. Daley?

Mr. Montgomery - In the name of rehabilitation, aren't you suggesting that through the CIC, we just completely "end-run" the constitutional prohibition against using public money for private purposes?

Mr. Daley - You're doing an "end-run" when you use public money for private purposes to loan money to industry. What I'm saying is: broaden the scope to do a balanced community that will attract industry. The economic development is really the key.

Mr. Montgomery - I know, but what we did here first was "to create jobs". Then we took it a little step further -- "to preserve jobs", and now through the CIC we're going to go all the way, for all practical purposes. That's what you're suggesting.

Mr. Daley - Yes, And the cities could take these block grants that HUD is sending down to them, channel it through the CIC's and make these rehabilitation loans we're talking about.

Mr. Montgomery - The real issue is, do we want to kick this in the teeth or not -- this public money for private purposes? It seems to me that that is a very fundamental issue.

Mr. Daley - But is it for a private purpose? This is the question. And I think that the question of urban renewal is a public purpose. The question of rehabilitating and conserving neighborhoods has always been determined a public purpose under the Ohio Constitution, as I understand it. Otherwise, we wouldn't have urban renewal projects.

Mr. Montgomery - Any purpose is a public purpose...

Mr. Daley - If it's so declared by the local government body. That's a very broad term, as you know.

The next speakers were Mr. Jack Huddle, Development Director of the City of Columbus and Mr. William Losoney, Executive Director of the Ohio Housing Development Board.

Mr. Huddle indicated that, in Columbus, Ohio's present laws relating to development have worked relatively well, although the practical result has been to favor the development of outlying areas, where it is easier to get a developer to dedicate land for use as streets, recreational areas and so on, because the consumer demand is there and developed property is more readily saleable. The redevelopment of areas closer to the center of the city, however, presents more problems. For one thing, he indicated, the redevelopment of such areas is more expensive, since it often involves the relocation of a large number of existing utility lines, and may involve the realignment of streets. It is also more difficult to get a developer to dedicate areas for public use, or for anyone to rehabilitate existing housing, because public demand is not as strong, or people who live in the area cannot afford to pay the costs involved. Mr. Huddle said he saw the need for closer cooperation and effort between the private and public sectors particularly in the redevelopment or rehabilitation of center-city areas.

Mr. Losoney indicated that the Ohio Housing Development Board is at present somewhat unsure of its powers, due to a potential conflict between the legislation which created it and the constitutional prohibition against the lending of aid and credit by the state. He expressed the hope that the matter would soon be resolved.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
July 10, 1975

Summary

A luncheon meeting of the Local Government Committee took place on July 10, 1975 in the Commission offices in the Neil House. The committee members present were Linda Orfirer, Chairperson, Mr. Russo, Mr. Fry, Mr. Wilson, Mr. Heminger, Mr. Montgomery and Senator Mussey. Mr. Carter joined the discussion. Ann Eriksson, Director, and Brenda Avey, were present from the staff.

Mrs. Orfirer: You all received the analysis and comparison of the governor's proposal with the work of the commission. The only one that I think pertains to us as a committee is the one that refers to housing and nursing homes, etc. Let's go through it together. I think the main thing is in the first sentence where it says, "Proposes to add Section 14 to Article VIII, declaring it to be a public purpose..." which is, of course, what we have been discussing at all of our meetings "to assist in the acquisition, construction"etc., "of new or existing residential housing" which is the part that pertains to us. It permits making loans to lending institutions for lending to others, purchase of secured obligations from lending institutions, making direct loans, which you will recall came up in the presentation that we had from the gentleman the other evening which was the problem that they pointed out to us that at the moment it is not possible to make direct loans to people and therefore the H.U.D. people are having difficulty in Ohio, guarantee loans and provide interest subsidies, make loans or grants for such purpose to political subdivisions, public authorities or agencies or corporations not for profit designated as such agencies. This would include the community improvement corporations, also discussed by the gentleman from H.U.D. the other evening.

Mr. Wilson: You skipped the one I object to the most, number 5 says "acquire".

Mrs. Orfirer: Yes, you're right. Acquire, rehabilitate, sell, lease or exchange such property. So the state becomes an owner, right?

Mrs. Eriksson: Or a political subdivision. It could be either.

Mrs. Orfirer: Borrow money and issue bonds or other obligations for such purposes. None of the foregoing would be subject to any other provision of Article VIII, or Section 6 and 11 of Article XII. They could set up reserve funds, would not be restricted by the constitutional prohibition against lending aid and credit to private persons and corporations nor by the restriction against incurring debt without making provision for levying taxes to pay the interest and principal at maturity. The Ohio Housing Development Board said that they were unsure of their status, This clarifies their status in the proposed provision and would also validate H. B. 870.

Mr. Fry: They said they were going to initiate a suit. I don't know if they ever did or not, trying to get it determined.

Mrs. Orfirer: Of course, this would determine it.

Mr. Fry: Yes.

Mrs. Orfirer: We're down to the effect on previous commission recommendations. There appears to be no direct conflict between the commission recommendation on state and local debt, but there is a philosophical one. The commission has consistently taken the position that what constitutes a public purpose, and for what public purposes the state and its political sub-

divisions may extend their aid and credit to, should be a legislative matter and not a constitutional one. Then, of course, the sections 4 and 6 of Article VIII that we have been talking about and that we already have recommendations in regard to the aid and credit of the state.

I've reviewed this considerably with Ann and with Julius, in regard to where this committee stands and where this committee may go. We seem to have come up at least against a temporary wall and maybe against a permanent wall, in that if this proposal goes through it not only does all the things that we have been talking about that need doing, but it does considerably more. It leaves us, at this point, I think, with waiting to see what happens with these proposals. I don't think there is much point in our trying to introduce any in the legislature until we see what happens to this or even think about it ourselves until we see what we're confronted with after November. We do have in the proposals for 4 and 6, which I guess are going to also be held in abeyance. Even though they are there, nothing is going to be done in the legislature in regard to them as far as we understand it, until after November. So that we are in a position where we as a Commission have already made proposals which are in limbo and we're just in a position of waiting and seeing. If this should not go through, then I think we can just work for the passage of 4 and 6 and discuss the adding of making housing a public purpose in section 13.

Mrs. Eriksson: I don't believe that would be necessary. If 4 and 6 and the commission's debt proposals were adopted, I don't think you'd have to add housing in section 13. I think that would be an alternate.

Mrs. Orfirer: You think it would be covered sufficiently.

Mrs. Eriksson: Yes. Adding to section 13 would be an alternate that could be discussed.

Mrs. Orfirer: I don't think we are even in a position to take a position for or against this if we should wish to. I think we have an obligation, perhaps, to educate on all of these proposals, but I think that's as far as, is that how you read it Charlie?

Mr. Fry: Yes. I'll be interested in seeing Senator Mussey's comments on this. But it seems to me that this is the way it is going to be on the ballot. We're not going to have any input. Jack mentioned that he was concerned about giving the subdivisions and the state the ability to acquire property. But you either take it all or you don't take it. It seems to me that we can interpret it, but other than that we just have to wait and see what happens.

Mrs. Orfirer: Senator Mussey, do you have comments that you would like to make?

Senator Mussey: I was trying to recall some of the problems that came up in the Senate in the subcommittees when these original proposals went through. As I remember, this was the only one that really didn't have any problems. This and transportation.

Mr. Fry: Was it in this form?

Senator Mussey: I would say pretty much so, I can't tell. This was very close to being approved. As a matter of fact, this was in the conference committee at the time of the deadline. The only reason why it did not go through along with the transportation was that the Governor had indicated to the leadership that he wanted all four or none. As I understand it, basically it simply means that the state can issue paper and use this money to give to savings and loans associations or banks and they in turn loan this money out to those that qualify under the laws that will be written by the General Assembly.

Mrs. Orfirer: I think it does considerably more than that.

Senator Mussey: But that's basically it, and then it goes beyond that. There are some things in here where you don't really know the answers and that is who would qualify? Would these be port authorities if the governor wishes? They could come under this, which is broad in scope. Port authorities really would be able to do just about anything and this always gives you some thoughts. And, of course, as you say, these community improvement corporations. But those seemingly are basically for industrial development.

Mrs. Eriksson: I would think, Senator Mussey, that that particular question as to what agencies we're talking about would be up to the General Assembly to decide. I believe that this proposal does have some definitions in it, but I believe the General Assembly will make some of those decisions.

Mrs. Orfirer: Under 3, where it says make direct loans, this enables the state and the subdivisions to make direct loans to individual people?

Mrs. Eriksson: Right.

Mrs. Orfirer: And there is no restriction on that?

Mrs. Eriksson: There is none written in the constitution, no. Nor, of course, as you undoubtedly realize, there are no income limits written into the constitution.

Mr. Russo: Well, it would be difficult to do that. This is the only way you could write it simply because you have to remain flexible, you don't want to lock it into the constitution. The legislature will determine what the uppers and lowers are.

Senator Mussey: How about the use of the words "or grants"? To make loans is one thing but to make grants is another. How are you going to pay back these notes or these bonds if you don't make loans with this money? Could this money be used along with federal grants?

Mrs. Eriksson: Yes.

Senator Mussey: And would the word "grant" be necessary, if there was such a program under this part of the constitution or under the laws that would be written, for the completion of a program that would utilize federal moneys which would be grants?

Mrs. Eriksson: I'm sure that the federal program does provide that. But of course this isn't restricted only to the use of federal moneys.

Senator Mussey: Yes, but might we need the word "grants" in there to make sure that someone could not question a program that constituted a grant from federal funds? In other words, if you didn't have the word "grant" in there and you did attempt to grant, someone might say you didn't provide for grants, we only provided for loans in the constitution. So that could be in there merely to permit the state to enter into a program where there was federal grant money, not necessarily state money.

Mrs. Eriksson: It is possible that's why it was put there. Of course, there is nothing mandatory about any part of it. It's going to be subject to legislative action.

Mr. Fry: That's the only restriction is that they have to pass the laws.

Mrs. Eriksson: And I would also point out that there is a provision in the constitution



that says in the absence of laws by the General Assembly to the contrary, and municipal corporation or any county may do a good many of these things directly. It gives some direct power to the municipal corporations and counties which the General Assembly could negotiate. The language can be found on page 8. "In the absence of laws, the municipal corporations or any county, may assist or engage in the acquisition, construction, equip and repair, etc., by such methods as it may determine including but not limited to any of the methods provided in division B". So it gives a direct grant of authority to municipal corporations and counties.

Mr. Russo: This is implied consent, really.

Mrs. Orfirer: Yes, but we've been saying as you said earlier it just gives scope and nothing can happen unless the General Assembly determines it shall happen, but what this really says is in the absence of action by the General Assembly, it may happen, it's granted, which is, as we know, another story. It's one thing to grant it and another thing to have action without it.

Mr. Fry: I'll tell you this. The constitutional convention in 1912 would never have adopted this. That's when they were concerned about going too far the other way.

Mrs. Orfirer: It's interesting that two years ago/<sup>in</sup>the commission, we were not even willing to vote to make housing a public purpose. And the governor has gone all the way over to this.

Mrs. Eriksson: It didn't get to the commission, then, it was a committee decision. The committee never made the recommendation to the commission.

Mrs. Orfirer: But we did have a public hearing where this was recommended to us.

Mr. Carter: Yes.

Mrs. Orfirer noted that the housing proposal was probably the least controversial of the four and it doesn't provide any new taxes. Other persons disagreed.

Mrs. Orfirer: It does do many of the things that we would like to see and many of the things that we have recognized the need for, it's just that it goes so much further.

Mr. Russo: I can buy this kind of a concept of broad powers, simply because although it is delegated by the constitution, the fields in which we can spend money, it still can only be controlled by the legislative branch of government. And so consequently I'm not too worried about what can happen if we pass the constitutional amendment because it can't be implemented under any circumstances unless there is lack of action or action by the legislative body.

Mrs. Orfirer: There is a big difference between action and lack of action.

Mr. Russo: I think that if a county were to move in and operate under this constitutional amendment that certainly the state legislators would move very rapidly to come to grips with this subject matter.

Senator Mussey: I would suggest that on the passage or acceptance by the public of this particular amendment there would be almost immediate legislative action because of the need for housing. I don't look for the absence of laws passed. I really believe that there would be almost immediate legislative action to implement this particular amendment.



Mrs. Eriksson: The General Assembly has already passed a housing bill and this is intended to validate that. So the General Assembly might or might not have to take further action. It would depend on what the feelings were, as far as this provision about municipalities.

Mrs. Orfirer: In the minutes of the May meeting, we listed, or it was an outgrowth of a worksheet that Julius prepared for us, we discussed several things that we were interested in, such as land banks. We talked about tax abatement and we talked about land banks and we talked about reserve funds, this kind of thing. I think all of these would be covered by the governor's proposals. My question is, if they do not go through, would such things be taken care of by the Commission's recommendations on sections 4 and 6. Would they fall under that? Or do we need to come back as a committee and discuss whether we want to do a provision?

Mrs. Eriksson: The land bank question is a question of eminent domain powers.

Mrs. Orfirer: I think our conclusion was that we really couldn't do much about eminent domain powers in light of what has happened.

Mr. Fry: I would suggest this. I'd like to get together after the election.

Mrs. Orfirer: Well, then I think where we are is that we will reconvene after the election.

Mrs. Eriksson: I think on some of the questions we would have to do some more research on exactly what are the issues involved.

Mr. Fry: About land banks, is this land for urban renewal purposes or industrial development?

Mrs. Orfirer: Industrial development primarily. In Cleveland, for example, this drew out of our discussion about what happens in Cleveland when industries want to relocate within the city or expand their plants in the city and are not able to put together or purchase sufficient amounts of land.

Mr. Fry: At the same time there are a lot of unutilized sections of land where no business could put it together without the power of eminent domain.

Mrs. Orfirer: So I think these things we will just have to look at again. Charlie, what is the difference between the present law which permits tax abatement and the governor's proposal?

Mr. Fry: The present law which permits tax abatement has to have a community improvement corporation, they have to be within certain areas that have been designated by the federal government that's eligible for the help, and so on. The governor's proposal opens it up, and really this is one I can get enthused about because the only property tax problem of you only tax them if they try to improve it. Philosophically the housing one is the one that's the biggest departure.

Mrs. Orfirer: I think we will just leave it then that we will wait and see what happens in November, that we will meet again in November after the election, in any event, whichever way it goes and in the meantime the staff will have done some further research on what will be covered by 4 and 6 of those points that we have been interested in.

Mr. Fry: I think we should react rather quickly, so that we're in a position when the legislature comes back, if we're going to do something, we've got it waiting for them, when they get back here. I don't want to get caught trying to get all of these things through during the early part of the second year of this biennium.

Mrs. Orfirer: Then your point is that if there are any remaining points that are not covered by 4 and 6 and the Governor's proposals go down, you want the staff ready with specific drafting for us to consider at our November meeting, if further proposals are needed.

The meeting was adjourned.

Ohio Constitutional Revision Commission  
Local Government Committee  
November 18, 1975

The Local Government Committee met on November 18, 1975 at the Commission office in the Neil House in Columbus. Present were Mrs. Linda Orfirer, chairman, and committee members Messrs. Fry, Guggenheim, Heminger, Russo and Unger. Also present was Commission Chairman Richard H. Carter. Observers present were Messrs. William Losoncy and Luther Yates of the Ohio Housing Development Board staff, Mr. Gene Borton of the Legislative Budget Office, and Mr. John Gotherman and Ms. Colleen Woods of the Ohio Municipal League. Commission staff members present were Director Ann Eriksson and Julius Nemeth.

Mrs. Orfirer - As I think you know, we last met as a Local Government Committee to discuss some of the problems of the cities we had not yet touched upon, and we zeroed in on housing as the area which we thought was most untouched and, we thought, needed. We had a hearing, at which you will recall we had several people come and testify. They were having some problems in some of the government agencies because the Constitution was being a limiting factor. We left it that we would wait and see what happened to the Governor's proposals, because as you all know Issue No. 4 dealt with housing, and beyond housing with nursing home and health care facilities. We were not entirely happy with it because it did go in directions which we felt perhaps it should not, but it did cover, basically, the material which we were discussing. We agreed to move ahead quickly if it did not go through and, of course, it has not gone through -- so here we are.

We heard from the people who came and testified at our hearing that money can not be lent to private parties, that the new HUD programs give money to local authorities, and that the local authorities do not have the right to pass this money on, so that what the Federal government was attempting to do is being thwarted in the state of Ohio. We talked about various ways in which this change could be put into the Constitution, and thought that we ought primarily to look at Section 13 of Article VIII, where it would be relatively simple to add housing to that section, which deals with industrial development, and would do two things that needed to be done. It would make housing a public purpose, so that public money could be used for it, and it would make it possible for the faith and credit of the state to back it up. That's where we left off, with a request for the draft of language as simple as possible to be added to Section 13 that we could look at.

I have given considerable thought to the fact that this proposal did go down. My own feeling, and my feeling from talking to the general public about it is that there were several reasons why that failed that should not affect an attempt that we would make to put housing through ourselves. I think it had the weight of the other issues and the tremendous publicity against it. It did not lose by as much of a margin as any of the others, and, of course, it did not have the opposition of the groups which opposed the other amendments. The AFL-CIO came out, I believe, for it, and The League of Women Voters took a neutral position rather than oppose it, as they did with the others. As you are aware, the General Assembly had already taken two steps -- it had passed House Bill 870, and it had also agreed to put the Governor's proposal on the ballot, although there were some differences. The Governor insisted though that all four go on.

at once, and that was when he took the initiative petition route. But the General Assembly had apparently been willing to put this on the ballot.

Mr. Fry - What happened on the matter of usury in this last General Assembly? Nothing? When we passed H.B. 870, it was with the understanding that the AFL-CIO would drop its traditional opposition to having the usury statute changed in any way.

Mrs. Eriksson - I don't know. A bill was introduced but I don't know what happened to it.

Mrs. Orfirer - But, of course, that is something that the Legislature could change. It's not a constitutional concern. I think we have a very good chance here of accomplishing something that needs to be accomplished. We have nonpartisan support for it, with the Governor, the General Assembly, with some of the "good government" groups. I think that, hopefully, we could get this through the General Assembly quite quickly, and onto the June ballot, if this is what we and the full Commission decided we wanted to do.

Mr. Unger - I'd like to ask some questions about "Draft A" of Article VIII, Section 13. I gather this is what the staff has prepared to accomplish what the chair has been talking about.

Mrs. Orfirer - This is one of four drafts, Paul -- "A", "B", "C", and "D".

Mr. Unger - But it's the only one on Section 13, right?

Mrs. Orfirer - Well, there's draft Section 14, which would be a new section. What is "D" -- in addition to Section 13?

Mr. Nemeth - No, "Draft C" would be an alternative to either "A" or "B". "Draft D" should be discussed, if it's going to be, in the context of the Commission's proposal for a flexible general obligation debt limit, and the concept that perhaps tax moneys appropriated to reserve funds should be encompassed in the calculations of the margin remaining for general obligation debt under Article VIII, Section 1 as we recommend it.

Mr. Unger - I'm particularly interested in some questions that arise in reading "Draft A" and the relating that to "Draft D". Is it your recommendation that we have both "Draft A" and "D", or "D" instead of "A"?

Mr. Nemeth - "D" would have to be discussed in a slightly different context. "Draft A" or "Draft B" could be proposed without any other changes in the Constitution, that is, without our flexible debt limit being adopted.

Mr. Carter - Could I comment on that? There are two questions that are involved. One is the authority to issue revenue bonds, and that is related to drafts "A", "B" and "C". The second question is that if the state is to appropriate money to a reserve, that come very close to a general obligation -- if that should be considered in connection with the Commission's recommendation with respect to the debt limit. And that's what "Draft D" is involved with. Do I state that correctly?

Mr. Nemeth - Yes.

Mr. Unger - So, in other words, we could, if we liked it, adopt "Draft A" separately, and we could also add "D" if we had that interest.

Mr. Carter - Now, as I understand the memo, there are two questions on H.B. 870. One is the question of the authority to issue revenue bonds and the second is making this appropriation to a reserve fund. That's why Drafts "A", "B" and "C" dealt with the first question, and "Draft D" dealt with the second question.

Mr. Guggenheim - Dick, is the reserve fund just a general reserve fund under the flexible debt limit?

Mr. Carter - Well, that's the suggestion in "D" -- that if the General Assembly is to appropriate money to a reserve fund, that it be included in the debt limit.

Mr. Nemeth - In the calculations for establishing what margin there is for general obligation debt. "Draft D" would not, of itself, turn these obligations into general obligations.

Mr. Guggenheim - But I don't get the connection between a general reserve with regard to the general obligations of the state and the housing provision which is a revenue bond provision.

Mrs. Eriksson - It's not a general reserve for the general obligations of the state. The reserve fund question only comes in in conjunction with the housing program, and it is a part of H.B. 870 -- the possibility that the General Assembly might appropriate money to reserve funds which would be used to secure the revenue bonds issued by the Housing Development Board.

Mr. Guggenheim - The reserve fund is for housing. In other words, one of these drafts provides for revenue bond authority, and another draft provides for a reserve fund that would back up these bonds?

Mrs. Eriksson - No, Drafts "A" and "B" both do the same thing, they just do it in a different form. They both, in our opinion, solve the two questions that had been raised, as far as we know. Now, we're not saying that when the court test of H.B. 870 comes, that we have ascertained exactly what the constitutional problems are, but this is our best judgment. The one is whether it is a proper public purpose, and that's really a "shorthand" way of saying whether the state can lend its aid and credit to private enterprise, and the second is the question of the reserve funds, which some people question as being possibly unconstitutional because the state can appropriate money to them, and those funds are used to secure the obligations of the Board. Both Drafts "A" and "B" address themselves to both of those points, "A" in the form of an amendment to an existing section, and "B" is simply the same thing, except written as a separate section which applies only to housing. That's the difference between them.

Mr. Unger - Well, does "A" cover the reserve fund at all?

Mrs. Eriksson - Yes. Look at the language that is near the bottom of the first page.

Mr. Unger - Would that cover the constitutional question you raised?

Mrs. Eriksson - As far as we know it would, and the reason we say this is because this draft is something which had been proposed to the Commission's Finance and Taxation Committee earlier, before the enactment of H.B. 870.

Mr. Unger - If that's covered in that part of "A", you wouldn't need "D". "A" is free-standing.

Mrs. Eriksson - That's correct. "A" and "B" both are free-standing.

Mr. Unger - As I understand it, if we were to accept "Draft A", that that would cover the problems that you see, that you outlined, and it would also establish housing as a public purpose in the Constitution and allow H.B. 870 to go into operation, presumably.

Mrs. Eriksson - Presumably.

Mr. Unger - We can't be the court that decides these things, but this is the intent of this language.

Mrs. Eriksson - That's right.

Mr. Unger - I don't suppose that that language about Am. Sub. H.B. 870 -- that paragraph on page two -- was in at the time this was first considered by the Commission. That came afterward.

Mrs. Eriksson - No. We, of course, added that.

Mr. Fry - Isn't that unusual -- to have that in the Constitution?

Mrs. Eriksson - That was done for the industrial development revenue bonds, because it was the same situation where they were trying to validate an existing law. That was H.B. 270.

Mr. Unger - And that's in the Constitution?

Mr. Nemeth - It was. It's now removed because it no longer serves a purpose. H.B. 270 has since been repealed or replaced by another statute.

Mr. Unger - But you mean when the constitutional provision was written, it did have this kind of wording in it.

Mr. Nemeth - That's correct.

Mrs. Eriksson - And Issue No. 4 on the ballot, the Governor's proposal, also contained a specific validation of H.B. 870.

Mr. Unger - What's your opinion of the effect if that wording was not included?

Mrs. Eriksson - I wouldn't even render an opinion about that.

Mr. Carter - Wouldn't it be up to the courts then to determine whether H.B. 870 was in accordance with the Constitution?

Mrs. Orfirer - With what we drafted, yes. I don't think you can write it in that it is, can you?

Mrs. Eriksson - The General Assembly would probably feel it would have to go back and repeal and reenact the law. Bond counsel might advise the legislature that the law must be reenacted if not validated.

Mr. Carter - Because it was unconstitutional at the time it was passed.

Mr. Unger - What doesn't "Draft C" do?

Mrs. Eriksson - "Draft C" only addresses itself to the "public purpose" problem, and does not address itself to the "reserve" problem. In our opinion, the question of the reserves could open up the question of whether, in effect, those are general obligations of the state.

Mrs. Orfirer - Which bonds?

Mrs. Eriksson - The bonds provided for in H.B. 870.

Mrs. Orfirer - Or the ones we would provide for by making it a public purpose?

Mrs. Eriksson - Right. "C" only deals with the "public purpose" thing.

Mrs. Orfirer - And the "faith and credit".

Mrs. Eriksson - Not the "faith and credit", the "aid and credit". It really doesn't have anything to do with general obligations. It is a provision which gets around present Sections 4 and 6 of Article VIII of the Constitution, with respect to the state and political subdivisions.

Mr. Guggenheim - Is "C" what we originally recommended when we discussed this, I don't know how long ago? Is this the original recommendation?

Mrs. Eriksson - The original recommendation of the Commission, now, is a public purpose clause in the Constitution which would be for all purposes. This one is restricted to housing.

Mrs. Orfirer - But it makes it happen.

Mr. Russo - Right. And the reserve, you know, is not necessarily the absolute to accomplishing the housing question.

Mrs. Eriksson - Bond counsel may tell you that without the reserve funds they can't sell the bonds.

Mrs. Orfirer - What about industrial bonds -- is there a reserve fund for them?

Mr. Carter - No.

Mr. Russo - But bond counsel will tell you anything they want to tell you. They want everything "airtight".

Mrs. Eriksson - But industrial development bonds are different from housing. You know, the problems are different.



Mr. Guggenheim - I'm sorry, I don't understand the reserve fund under H.B. 870. H.B. 870 permitted revenue bonds for housing. But in addition to that, the state may put money in a reserve fund to back up a revenue bond?

Mrs. Eriksson - Precisely.

Mr. Guggenheim - And it also provided that this Board can make advances or commitments and participate in the making of mortgage loans, and so forth. With what do they do that? With the reserve fund?

Mr. Nemeth - With proceeds from the sale of the bonds. And the reserve funds could also be filled in part, and they are in fact expected to be filled completely, with revenues generated by the projects which they finance. But if the reserve funds did not meet the minimum requirements, that is, if they did not contain sufficient funds for the payment of principal and interest due on the bonds in the following calendar year, then the chairman of the Board would have a legal duty, under H.B. 870, to certify to the Governor that so much is needed by way of appropriation from the General Assembly to meet the minimum requirements. The Budget Office would have to include it in the state budget, and it would have to be forwarded to the General Assembly as a request, and then, the law says, the General Assembly "may" appropriate funds.

Mr. Carter - That's the "moral obligation".

Mr. Guggenheim - Let me just run through this. This Board would issue revenue bonds. Suppose Dick Carter wants to have a development in Piqua or Sidney or someplace for low-income people, so he estimates the amount of money he needs for the land, to build the buildings, and so forth, and he needs seven million dollars. So he goes to the Board, they approve the project, and they issue revenue bonds for seven million dollars, which, if they sell them, makes the money available to build this project.

Mr. Carter - That's the key -- "if they sell them".

Mr. Guggenheim - All right. Now, how can they make commitments to participate in making a mortgage loan, or to make advances or commitments? They don't have any money until they sell them. Where are they making these commitments from?

Mr. Carter - The revenue bonds would be sold for the purpose of backing the housing. They don't have to be related to a specific project.

Mr. Unger - They have a reservoir of the revenue bond proceeds to use.

Mr. Guggenheim - They would issue revenue bonds "in blank"? Today, as far as I understand it, you only issue revenue bonds backed by the project that produces the income.

Mr. Carter - That's on industrial bonds.

Mr. Guggenheim - It is? Are there other kinds?

Mr. Fry - Dick, you put your finger on it -- whether or not you are even going to be able to sell revenue bonds without saying what projects they are involved in. If you have a reserve fund, they'll say, "O.K., so we don't get a project that will sell. We'll depend on the reserve fund." And if they don't get the money from the reserve fund, then they certify to the Governor, "We need so much money".

Mr. Guggenheim - Well, they'd have to pledge seven million dollars in that reserve fund to those bonds before I'd want to buy them.

Mr. Fry - I don't think New York's housing bonds will help sell these, either.

Mrs. Orfirer - What you're saying is that you agree that we need the reserve clause?

Mr. Guggenheim - I just don't understand the thing because it's neither "fish nor fowl". It purports to be a revenue bond, but it turns out to be public housing supported by the taxpayer in one form or another.

Mr. Carter - It's a hybrid.

Mr. Nemeth - It's a mid-way, called a "moral obligation."

Mr. Guggenheim - Well, it's not a "moral obligation".

Mrs. Orfirer - No, it's not.

Mr. Guggenheim - New York has got "moral obligations" that Mr. Mitchell helped establish.

Mrs. Orfirer - And I don't think we ought to talk about it in terms of "moral obligation".

Mr. Russo - I think if we go to "Draft C" -- we give a broad power to the General Assembly to make determinations as those issues arise, or as the financing world changes. If we lock into the Constitution the reserve fund, etc., I don't think we're being too wise in that direction.

Mrs. Orfirer - "Draft C" is what we originally and all along have been talking about, as I read it.

Mr. Guggenheim - Yes, that's the one we had previously.

Mrs. Orfirer - Maybe it's time to worry as to whether bond counsel is going to do anything about it after this is enacted, and then let them go further and enact something else if they need to.

Mr. Fry - Does what we are saying make sense to you?

Mr. Losoncy - It doesn't.

Mr. Nemeth - This is Mr. William Losoncy, the Executive Secretary of the Ohio Housing Development Board.

Mr. Losoncy - Going back through that, I have a number of comments I wanted to make, as I listened here.

Mrs. Orfirer - Mr. Losoncy, I'm going to limit you to a couple of minutes.

Mr. Losoncy - O.K. I'll talk as fast as I can. First of all, H.B. 870 contemplates a range of programs: a direct lending program, both insured and not insured by FHA; indirect programs through mortgage purchase; and a loans to lenders program. None of these programs require a moral obligation as such. In the loans to lenders

program no moral obligation is required in order to market a bond. Under a direct loan program that's FHA insured, no moral obligation is required in order to market the bonds. The concept of "moral obligation" is basically a concept relating to the marketing and the sale of the bonds, and the question is the security of the bonds. Administratively, the programatic format that you chose to follow determines to a large degree whether you need that "moral obligation" or whether you don't need that "moral obligation". We were anticipating passage of Issue 4, and in setting up our approach to the program, we had arranged, tentatively, five million dollars in construction loans, under a construction loan note program on FHA insured loans. We talked to our underwriters and counsel and everything. We thought we could bring these to market during this month, and that we could sell these construction loan notes in the neighborhood of 6%, no "moral obligation" whatsoever, and no reserve fund being required for the sale of these notes. In January, we had anticipated selling about eight million dollars in construction, FHA insured.

Mr. Fry - And the reason they would have sold is because there would be a firm "takeout" at the completion of the project.

Mr. Losoncy - On the construction loan note, there was an FHA "takeout" at completion. And all the draws were FHA insured, so that it was practically risk-free. Under January's financing schedule, we had both construction and permanent financing, again fully FHA insured, no "moral obligation" feature, and no established reserve fund being necessary against that kind of a development. In addition to the FHA insurance, we discussed with the developers that they would put money into an escrow account that we would hold in our possession for a period of six years to cover the initial construction of the development and the initial operation. The money out of that escrow account would be available to us to apply to the project in the event that the rent-up didn't occur as rapidly as we had anticipated or utility costs were out of line with projections -- that sort of thing. So that, in those instances, we didn't contemplate, and we didn't need, a "moral obligation." And we did have a market for that kind of security. Similarly, under the loans to lenders program, no "moral obligation" is required, and similarly, under the mortgage purchase program no "moral obligation" is required. I think that "moral obligation" tends to get blown out of proportion. The value of it is for an agency that is going ahead with non-FHA insured developments. There, they're taking the entire risk without another agency taking the risk. In that case, the market has looked toward "moral obligation". In addition to that, every agency that has gone out and used "moral obligation" financing has established its own reserve funds in addition to the required capital reserve fund. If I may touch for a moment on the reserve fund again, where it comes from and how you get it. In the initial sale of your bond, you capitalize enough money to put into that capital reserve fund, and add of course the coming year's interest and principal due on your bonds, and that's where the initial "pot" comes from -- out of the initial sale of the bonds -- and it goes into that special fund. Your money then comes back to you based on your income -- returns from the rental of your developments and your investment of other moneys that you may have received.

Mr. Fry - What about Mr. Guggenheim's question -- who's going to buy that initial issue of revenue bonds? Where does that initial chunk of money come from?

Mr. Losoncy - We have been contemplating a different format. In the past, a number of the agencies had gotten a number of projects together into a group and had made tentative commitments to the developers based on their best estimate of their borrowing cost and their ability to get the money -- so that they might group together fourteen projects and then go to market and borrow twenty-five million dollars to finance the fourteen projects.

Mr. Guggenheim - I'm a little confused here. If you have FHA guarantees or other federal guarantees, "we don't need no help at all". You may need a mechanism, but you certainly don't need a reserve fund. That's fine, we can "peddle" those great. It's the other ones I'm worried about. When you say you get a reserve fund from the initial sale of the bonds, to go back to the example, if Dick Carter has got a seven million dollar project, and you want to sell bonds and set up a reserve fund, you've got to sell ten million dollars' worth of bonds or fifteen million dollars' worth of bonds.

Mr. Losoncy - Well, the magnitude is wrong, but the idea is correct.

Mr. Guggenheim - You have to sell something in excess of the requirement to build the thing, because he needs this seven million to build it, and you won't have any reserve left.

Mr. Losoncy - That's correct.

Mr. Guggenheim - Who's going to buy the bonds? They're only backed by a seven million dollar investment.

Mr. Losoncy - There are five billion of them out there now.

Mr. Guggenheim - Because they're backed by something else than a project, I assume.

Mrs. Orfirer - What are they backed by?

Mr. Losoncy - The "moral obligation".

Mr. Carter - Backed by the state's statement that they will undoubtedly back up the bonds.

Mr. Fry - Industrial revenue, you're talking about, now.

Mr. Carter - No.

Mr. Fry - On housing, already?

Mr. Carter - Yes. There is no such thing on industrial revenue bonds, They are straight revenue.

Mrs. Orfirer - All right. If we pass "Draft C", then we don't have to rely any more on the "moral obligation". Then we've got firm backing.

Mrs. Eriksson - If you go for "Draft C", then there will still be a constitutional question as to whether the reserve funds with appropriations from the state are valid or not.

Mr. Russo - Is the reserve fund absolutely necessary in the financing of housing?

Mr. Losoncy - No.

Mr. Russo - That's why I don't want to put it in the Constitution.

Mr. Losoncy - Can I answer that in two ways? The answer to your specific question is "No". The other side of the coin is, "What range of programs do you want to operate"? That's where you come into the question of whether or not you need "moral obligation". The states that have used "moral obligation", basically, came "on stream" in the late '60's or early '70's, and felt that the states had a responsibility to do something that FHA and HUD are not doing -- that the state ought to get control of the program and run it and operate it.

Mrs. Orfirer - Are you equating "moral obligation" bonds with this reserve fund?

Mrs. Eriksson - That's what it is.

Mr. Nemeth - The reserve fund creates the moral obligation -- it's an implied promise to pay.

Mrs. Orfirer - How do you create a firm obligation, not a moral obligation?

Mrs. Eriksson - Then you've got general obligation debt. Then you're violating the \$750,000 debt limit.

Mr. Russo - Our recommendation is to remove that, also, isn't it?

Mrs. Eriksson - That's the other part of this -- the relationship between this proposal and the other one.

Mr. Unger - I'm glad Mr. Losoncy is here, because I'd like to ask him, if we were to adopt something like "Draft C", and that would eliminate the concept of the reserve fund or "moral obligation", what would this mean in terms of the operation of your agency? What would you be able to do, and what would you not be able to do?

Mr. Losoncy - We would be able to handle FHA insured multi-family direct loans, and the loans to lenders program, and the mortgage purchase program. We could not operate a non-insured direct loan program. All we're saying is that our agency would surrender some of its decision-making authority to the insuring office of FHA.

Mr. Guggenheim - Isn't the real question whether there should be state-financed housing?

Mr. Losoncy - That's the real question we have to face here, I think.

Mr. Guggenheim - I think we ought to face it head-on, instead of going around the corner with "moral obligations".

Mrs. Orfirer - I do, too.

Mrs. Eriksson - Then you're back to the debt limit. And if you're willing to face that problem, then you can simply support the already submitted proposals. However, I want to raise a question that's causing some problems for the Municipal League which we did not raise in our materials because we really just didn't get that far, but it is of concern to them, before you make this decision even on this "moral obligation" question. Because that's not of concern to them. Their concern is with the "public purpose" question. There are two provisions in the Constitution, one of which says that the state can not lend its aid and credit to

private individuals and corporations, then another one that says that no political subdivision can do the same thing. The original debt proposal both of the committee and the Commission would have eliminated the prohibition against the state doing that because it would say that the legislature declares a public purpose and the state can lend its aid and credit and incur debt. But with respect to political subdivisions the original proposal was that the Assembly can provide by law for political subdivisions to do this. The Municipal League is anxious, at least with respect to housing, to see that carried one step further: to permit political subdivisions to do this without intervention by the General Assembly. And none of our proposals would do that. The issue that was on the ballot was self-executing as far as political subdivisions were concerned.

Mrs. Orfirer - If we recommend Section 13, so that all the provisions which now apply to industry also apply to housing, doesn't that solve the problem? My reading of Section 13 led me to believe that the earlier sections were superseded by it, and it was those earlier sections that said that the municipalities didn't have this power.

Mr. Gotherman - No. If you look at "Draft C" you can see the city problem easier, because it's very apparent by looking at this very short language. The reason why the cities find themselves with a housing fund suddenly is because of the Community Development Block Grant funds, which go primarily to cities, although some of them will go to the state. And the cities are obligated, or should at least -- and as some of you know, Cleveland and some of the other cities feel obligated -- carry forward some of the housing programs which the Federal government used to carry out directly, which no one will be able to carry out unless we correct our state of law in Ohio. The biggest example being rehabilitation loan programs, because the programs which have been carried on by the Federal Government will stop, and the cities would like to be in a position to use their block grant monies, probably not to make direct loans, but to leverage savings and loans and to subsidize interest rates to assure that these rehabilitation loan programs continue. Now, it's not a question of authority. If housing is a "public purpose" for the municipality and for the state, municipalities under their home rule powers have all the authority they need. The one impediment they have is the same impediment the state government has, and that's the problem that the Constitution specifically prohibits the lending of the aid and credit of the state or the city to private entities. So, in "Draft C", you can see that by the insertion of the words "as may be provided by law", what has happened is that you have placed a further limitation on the existing powers of local government. Currently, they could do this already but for this provision of the Constitution. You may ask, why is that important? It's important from a practical point of view, because we've had one year of the Community Development Block Grant Program go by, waiting for this amendment, without which the cities really couldn't do much with their block grant funds for housing purposes. To get it on the ballot, and we'll be in the second program year and we'll have a second year go by, and now if it were to pass this next time out, and we'd have to go to the General Assembly, and assuming that the General Assembly would understand the problem and grant it, we'd have a third program year go by without the kinds of programs that had been happening in Cleveland in the blighted areas for redevelopment. This just wouldn't happen, unless the city said "Well, we'll go ahead and do it and let someone file a lawsuit to stop us", which would probably happen, if they do that. So our concern on all these drafts is that you have actually placed another limitation on the authority of a municipality.

Mrs. Eriksson - It's the same in Section 13, if you adopted this draft of Section 13.

Mr. Gotherman - That's true.

Mr. Unger - Where is the limitation in Section 13?

Mrs. Eriksson - Where it says "as may be provided by law".

Mr. Russo - You mean, if you take that out in Section 14, "as may be provided by law", then that covers the subject matter for you, too?

Mr. Gotherman - I think if you take "C", and just drop out the words "as may be provided by law". You know, the state has to enact a law to act. Only municipalities have home rule powers, unless you have a county charter granting home rule powers. So you wouldn't be changing that in any way. This would change it as to municipalities and say you have to have a statute, which means that one, we pick up additional limitations by statute as a possibility and second, at least one more program year goes by without anything happening in Ohio at the local level in housing programs.

Mrs. Orfirer - I think our purpose was to free up the local political subdivisions.

Mr. Gotherman - Let me say this in regard to "Draft C". I still like it in one way. It's entirely possible that some cities, like Cleveland, in order to have anything happen in housing, will have to issue bonds that are general obligation bonds. And as you know, the cities don't have the same problems that the state has on general obligation bonds. They have general debt limitations which determine, overall, how much debt they can have. To make anything happen at all in some areas of Cleveland and other cities, it may be absolutely essential that those bonds be guaranteed, and maybe the priorities of those cities will have to be ordered in such a way that they will. Cleveland doesn't have a water system to build, but it has a housing stock that has deteriorated very extensively. It may have to go to general obligation bonds, and I would suggest to you that "C" does accommodate that much better than the others, which talk only in terms of revenue bonds. If you noticed, the proposed amendment did authorize, as to local governments, general obligation bonds, because by and large we're not doing the same types of programs that the state housing boards are talking about today. We're talking primarily about housing stocks in very deteriorated areas, where it may be necessary to subsidize them very extensively, in order to make housing at all feasible from the standpoint of market. And while philosophically that is not attractive to some people, people who deal with those both in government and in industry, I think you realize that that's the case -- that in Cleveland, in Hough, to make things happen there, you're going to have to subsidize, because the market is non-existent currently. So I think we have that additional concern.

Mrs. Orfirer - Not only in Hough, but also the white ethnic areas. It has broad application.

Mr. Fry - The investors in those bonds will have to make up their minds whether they want to accept the risk.

Mr. Gotherman - They won't accept any risk in these areas, that's the point. There is no businessman in Ohio that will accept the risk in those areas right now. And the only way they will accept it is if they know they are going to be protected.

Mr. Fry - I mean, if they had the faith and credit of the city, though.

Mr. Gotherman - Then they would accept it, that's clear.



Mr. Fry - I wouldn't be that sure.

Mr. Gotherman - We have a considerably different perspective on this than the state does, and therefore we would not be happy to see the amendment limiting local government to just revenue bonds. We may not be able to use revenue bonds in those areas.

Mr. Fry - What happens if we eliminate the phrase "as may be provided by law"?

Mrs. Orfirer - One other question on it. What about this "and related facilities"? I now understand what they mean, but is there other wording?

Mr. Gotherman - Let me address that one as well. That's the sort of thing where you have restaurants, commercial shops and things built into high-rise housing, and it's kind of difficult to tell what's housing, and what's commerce and what's industry, and the industrial revenue bonds probably wouldn't cover the drugstore, the grocery store -- the amenities. What's the name of the Cleveland residential building -- Park Center? "Housing" probably wouldn't, yet if you are going to put up a Park Center, you've got to provide those things in it. That's the reason for that "and related facilities", which are not primarily housing but necessarily incidental to housing

Mrs. Orfirer - Is there a way of wording it so the public isn't going to think we're back to the nursing homes?

Mr. Gotherman - Well, the nursing homes and related facilities was a big problem, but that was a particular specification.

Mrs. Orfirer - You don't think this will be interpreted as meaning that?

Mr. Gotherman - That was not controversial in the House, where the primary battle happened on the housing bill.

Mrs. Orfirer - So "and related facilities" is acceptable language that will not throw people off?

Mr. Gotherman - I would think so.

Mr. Russo - I don't think that was even dropped in the House on Issue 4. A move was made to amend it out, but it didn't even carry sufficient votes.

Mr. Fry - John, you run into the same problem -- if you took out "as may be provided by law", the General Assembly would still have to provide the definition of "families of low or moderate income".

Mr. Russo - That's another subject. While you brought that up, why do we have to have that in there at all? Why don't we just say "by persons and families as defined by the General Assembly"?

Mr. Gotherman - I think so. It would depend. If it were the State of Ohio, the county governments, or anybody else, the General Assembly would have to define that. If it were a municipality, that has powers of local self-government just as urban renewal apparently is -- there is no statute on urban renewal in Ohio -- the city itself would define that.

Mr. Fry - I'm not so certain that the city would define it.

Mr. Gotherman - I think they would, just as they define "blight" and "urban deterioration" in the urban renewal programs. The law-making power of the city, as long as it's a power of local self-government, dealing only with the city, would be co-extensive with the General Assembly's law-making power.

Mrs. Eriksson - Maybe we should take that "as defined by the General Assembly" out.

Mr. Fry - I'd like to think of some way, because I can see cities getting the authority to proceed, but until the General Assembly defines "persons or families of low or moderate income", they'd still be held up.

Mr. Gotherman - Another point about "low or moderate income" -- you know, some projects may be mixed projects. You are putting a limitation in here in terms of the use of this.

Mr. Fry - Exactly. They may not want them all of low or moderate income.

Mr. Gotherman - Particularly if we ever get back to rent supplements again, where some of the housing will not be low or moderate income. It might be housing that I could live in and I couldn't get a subsidy in it.

Mrs. Orfirer - I really think the simpler we keep this, the least language we can put in without creating difficulties for the future...

Mr. Gotherman - I would like to see the word "public" ahead of "purpose", because the "public purpose" issue is not the same as the "lending of aid and credit" issue. Ohio has never had a court decision saying that housing, absent slums and blight, is a "public purpose". So one thing Issue 4 went to is to say by constitutional fiat, as they did in the revenue bond financing, "that is a public purpose", and of course we accept the constitutional statement that it is a public purpose. The second major issue as to local governments was the lending of aid and credit. In "Draft C", for example, I don't see "public purpose" very clearly specified, and while it is not much other than the use of the magic words of lawyers and courts, "public purpose" would make me feel a little better, rather than just plain "purpose". Although authorizing the purpose may create a "public purpose" indirectly.

Mrs. Eriksson - Linda, were you suggesting that the expression "low or moderate income" come out?

Mrs. Orfirer - I was picking up on the suggestion that if the tendencies which are now occurring, that good housing is mixed housing, maybe we ought not to put that in there.

Mrs. Eriksson - That was controversial in the General Assembly, though.

Mr. Losoncy - That was why the word "primarily" was inserted there -- "primarily for persons of low or moderate income".

Mr. Unger - I think that's the best solution, because this allows other than low or moderate income, but not primarily, and primarily is in the direction of low and moderate, and I think that's what's necessary to get this passed.

Mrs. Orfirer - I do, too.

Mr. Russo - I'd like to raise an objection to that, since we might as well go "full circle" on this thing. The General Assembly should have the right to determine what the projects consist of, and the magnitude of the projects, simply because any city then that has a small council and a mayor can determine "We're going to put up a fifty million dollar project that doesn't consist of what's determined by the General Assembly". Or maybe the related purposes are greater than the public purposes of the project. Consequently, I think that that part about "as defined by the General Assembly" should remain. But I do believe that "low and moderate income" should leave there, because nobody can determine what "low and moderate income" is from year to year. So, the General Assembly or somebody should not have the right to say "you are low income" or "you are moderate income".

Mr. Gotherman - There is no current definition of what low or moderate income is, so rehabilitation loans and all those things would have to wait until they defined it. If you are going to take out "as may be provided by law" you'd have to delete the reference at the end, or it wouldn't make any difference.

Mr. Fry - You'd have to take the latterpart out, too?

Mr. Gotherman - I would think so. If you did not, we'd have to wait until they defined it.

Mr. Losoncy - As it stands, under H.B. 870, the General Assembly obligates the Board to determine who low and moderate income families are.

Mr. Unger - So if you took out "as defined by the General Assembly", there is a method, under law, provided. If we adopt this "Draft C" rather than "Draft A", what would be the effect on your agency? Would you be able to operate or not?

Mr. Losoncy - Yes, I think we could. I think that would take judicial review, which is why Squires was in favor of that tag line that said that H.B. 870 was adopted and ratified, etc.

Mr. Unger - But "C" doesn't have that.

Mr. Losoncy - No, I agree. And I think we would still have to go to court in that case.

Mr. Unger - In other words, you couldn't operate until you went to court first.

Mr. Losoncy - That would be my guess, though I am not an attorney.

Mr. Fry - I'm not an attorney either, but it seems to me that with "Draft C", amended as suggested here, you could still do a lot more than you are doing now.

Mr. Losoncy - Correct.

Mr. Fry - This would be a giant step forward, and we would get away from this sticky question about this "moral obligation" and the reserve and so on.

Mr. Losoncy - May I throw out something from our "what it may be worth department"? We are planning to go to court to find out whether we can operate under the present provisions of the Constitution.

Mr. Unger - You say you could operate under "C". What could you do under "C" that you're not doing now?

Mr. Losoncy - I don't like to say in front of legislators that we are not doing anything -- we're doing virtually nothing at this point.

Mr. Unger - That's my impression. What could you do under "C"?

Mr. Losoncy - The question at issue is two-fold: is it a "public purpose" to provide housing for low and moderate income persons and are we lending the aid and credit of the state in a way that's prohibited by the Constitution? We say housing for low and moderate income families is a public purpose. As John has pointed out, the Court has never gone quite that far. They've said that elimination of slums and blight is a public purpose. And we say we are not lending the aid and credit of the state.

Mrs. Orfirer - But under "C" you could do that.

Mr. Unger - Yes, but could you do it without the enactment of another state law? it doesn't say anything about validating H.B. 870. But as of now, there's nothing you could do unless you got another state law and possibly another judicial decision.

Mr. Losoncy - I don't think that's clear.

Mrs. Orfirer - If we added the wording at the end of "A" about H.B. 870, do you think that would solve your concern, Paul?

Mr. Unger - There are some other questions. That would possibly take care of not needing another state law in order to make the Housing Board operational.

Mr. Losoncy - Yes, but may I speak to that? In the case of H.B. 270, if you recall the history of that, there was a bill enacted by the General Assembly, and then the court test was consummated ...

Mrs. Orfirer - I'm sorry, but I am going to have to ask you to stop here, and I hope you can meet with us later, when we can get the rest of this.

Mr. Losoncy - Right.

Mrs. Orfirer - I want to get down to just a couple of specifics and then we'd better go. What is it that you don't see "Draft C" doing? What is it that you want in here, or maybe there are no objections to "Draft A"?

Mr. Unger - "Draft A" of Section 13 does all the things that would make this operational without a court decision, and without another enactment by the General Assembly. In other words, the state law which was enacted a couple of years ago which resulted in the setting up of the Housing Board which now exists, would be validated as soon as the people accept this amendment to the Constitution, if they do. So that what we're talking about is either a way of making this Housing Board operational and the law that put it into effect, or, we're talking about various other delayed mechanisms of partially doing some of the things necessary to increase the possibility for housing.

Mrs. Orfirer - Why doesn't "Draft C" do?

Mr. Unger - It wouldn't take care of the reserve fund.

Mrs. Orfirer - I see. That's what you're thinking of.

Mr. Russo - That's one of the big hangups we had over there in the House in the first place. The bill barely passed except for some political commitments, to start off with. Is there an absolute necessity for the reserve fund? Aren't there other ways of financing for the state of Ohio without locking in a reserve fund in the Constitution?

Mr. Guggenheim - I think "Draft C" would allow financing, if they wanted it.

Mr. Russo - Right.

Mr. Unger - This is already a state law, and that law was in effect duplicated again by the Assembly.

Mr. Russo - Let me point out a simple example to you. If the Federal government comes in with a brand new housing program, the state could possibly be locked in as a secondary guarantor, simply because the people now demand it simply because we've now got it in the Constitution?

Mr. Unger - No.

Mr. Russo - I think they will, since we've got it in the Constitution. If I were investing and the state of Ohio had a mechanism to guarantee me my money at the same time the Federal government guarantees part of it, I'd grab both the guarantees.

Mr. Unger - The Constitution only enables. It doesn't make anybody do anything.

Mr. Guggenheim - You're referring to this section that refers to H.B. 870? I want to say this: I am flexible and I'm open to persuasion, but in principle, I'm very much against mentioning specific statutes in a constitution. I think it's real bad draftsmanship. It's not the way a constitution is supposed to operate. If you want to legislate for another canal, up to the Lakes, or something, we go right back to where they were then. I think it's the Legislature's job to pass the statutes. It's not the Constitution's job.

Mr. Unger - I couldn't disagree with you. On an academic basis, it's absolutely true. But here we have a little different situation, where there is some doubt about the constitutionality of an existing law.

Mr. Fry - Tony said, getting this Bill 870 through, if they had to get enough votes to put it on the ballot as a constitutional amendment, they'd have trouble. It was a very controversial thing. Let me say what my position is, and you can think about it until afterwards. I'd like to see this "Draft C" read "NOTWITHSTANDING ANY OTHER PROVISION, ETC., ETC.," down to "EXTEND THEIR AID AND CREDIT", eliminate the clause "AS MAY BE PROVIDED BY LAW," "FOR THE" and insert "PUBLIC", "HOUSING AND RELATED FACILITIES". If 870 meets that, it'll be alright and they're going to test it anyhow. But this will give you a big gate you don't have now.

Mrs. Orfirer - What could we add to "C", or "A", which would accomplish the purposes of 870 without just having to refer to it, which you object to ?

Mr. Fry - I'm not enthused about the reserve clause or that reserve deal or the "moral obligation", I think we're kidding ourselves. I think people are going to invest in City of Cleveland bonds if they think it's a good investment, and I think the reserve thing and the term "moral obligation" just clouds the thing up.

Mrs. Orfirer - What 370 does is this reserve fund.

Mr. Russo - That's one of the constitutional issues that it involves.

Mr. Unger - That's the other thing besides what's in "Draft C".

Mr. Russo - Right. But "Draft C" does not prohibit that. "Draft C", as we amend it, will not prohibit that.

Mr. Guggenheim - It might authorize it.

Mr. Russo - It might, fine, but it doesn't prohibit it.

Mr. Guggenheim - No.

Mrs. Orfirer - Where do the rest of you stand? I think we're very much agreed, then.

Mr. Guggenheim - Charlie, I want to ask you, did you drop that thing at the end there, "INTENDED PRIMARILY FOR. . ." You dropped that?

Mr. Fry - Yes.

Mr. Guggenheim - O.K. I'll buy that.

Mr. Unger - Charlie, why do you want to drop all of that rather than just "AS DEFINED BY THE GENERAL ASSEMBLY"?

Mr. Fry - Because they're trying to get developments now that are not just for families of low and moderate income, and the General Assembly and the agency is going to have to look at these programs, and determine whether housing and related facilities are good for the state.

Mrs. Orfirer - I'm afraid you're going to run into a hang-up, Paul, on definition.

Mr. Unger - Well, we have a method of definition now in the Housing Board, if we just leave "AS DEFINED BY THE GENERAL ASSEMBLY". And the word "PRIMARILY" allows for other types of housing besides low or moderate income, but not in the majority.

Mr. Fry - Let's think it over. We can talk about it after our meeting. But it seems to me that if you take that way, I'm not certain that the Housing Board could determine low or moderate income unless we said it was going to do it. If we said "low or moderate income", the courts would still have to go back and determine whether or not the Housing Board would have a right to do that.

Mr. Unger - The Assembly's given them that right, so far, and it can remove that right too, if it wants to.

Mr. Russo - Sure, and that's the purpose of leaving this as broad as possible, for the General Assembly to do what it has to do to meet the changing times.

Mrs. Orfirer - Once you lock low and moderate income into the Constitution, I think the courts are going to come back and say "This has to be defined".

Mr. Unger - Well, that may be. I was only thinking about what would help to get this passed by the general public. I wouldn't argue about that.

Mr. Fry - I tell you, this will look a lot simpler on the ballot than anything else.

Mrs. Orfirer - I think we are pretty much in agreement, aren't we? Let me read this: "NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, THE STATE AND ITS POLITICAL SUBDIVISIONS, AND ITS OR THEIR PUBLIC AUTHORITIES, AGENCIES OR INSTRUMENTALITIES, OR CORPORATIONS NOT FOR PROFIT DESIGNATED BY THEM AS SUCH AGENCIES OR INSTRUMENTALITIES, MAY EXTEND THEIR AID AND CREDIT FOR THE PUBLIC PURPOSE OF HOUSING AND RELATED FACILITIES." Any objections?

Mr. Unger - No.

Mrs. Orfirer - That's it.

Mr. Guggenheim - I think we've got a consensus. We don't have to meet later.

Mrs. Orfirer - Right

The meeting was adjourned.



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LOCAL GOVERNMENT IN OHIO: CONSTITUTIONAL ASPECTS

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Sponsored by:

Ohio Constitutional Revision Commission  
Ohio State University College of Law  
Ohio Municipal League

Center for Tomorrow  
2400 Olentangy River Road  
Columbus, Ohio

November 18, 1971

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1 Morning Session, 9:45 a.m.,  
2 Thursday, November 18, 1971.

3 - - -

4 CHAIRMAN CARTER: May I have your attention,  
5 please? For those of you that I have not had the pleasure  
6 of meeting, I am Richard Carter, from Fostoria, and I have  
7 the honor of being the Chairman of the Ohio Constitutional  
8 Revision Commission; and on behalf of the Commission, I  
9 certainly want to welcome all of you here today.

10 The Commission is pleased to cosponsor this dis-  
11 cussion with the Ohio Municipal League and the Ohio State  
12 University College of Law.

13 We had no idea as to the amount of registration  
14 that we would have for a subject matter of this type. We  
15 were very pleased to learn last week that the number of  
16 people that wanted to attend far exceeded the facilities we  
17 had originally scheduled, which was a much smaller room.  
18 So, just as of yesterday, we changed it to the auditorium  
19 here which, of course, is larger than we need but, on the  
20 other hand, made it possible for some of the people that  
21 we had to turn down earlier, made it possible for them to  
22 attend.

23 Now, before going further, I would like to intro-  
24 duce to this group a person whose name does not appear upon  
25 the program that you have, and that is the Executive

1 Director of the Ohio Constitutional Revision Commission,  
2 and she is largely responsible for putting this program  
3 together and has put a lot of work in it. I would like to  
4 introduce Mrs. Ann Eriksson. Hopefully, she is in the room.  
5 Is Ann here at the moment? Well, she is out trying to get  
6 things squared away. But Ann is really the one who has made  
7 this possible more than any other single person.

8 Now, the subject matter that we're going to be  
9 discussing today is a really tough one, as you all know.  
10 One of the real problems facing our society is making some  
11 progress in the crisis of the urban centers. We simply  
12 have to find ways of doing this. Now, the Ohio Constitu-  
13 tional Revision Commission is very much aware of the impor-  
14 tance of this problem and we certainly are aware of the  
15 very great difficulties that stand in the way of making  
16 progress.

17 To open this discussion, I would simply like to  
18 quote a couple of sentences that have appeared from a  
19 recent paper by a keynote speaker. It seems to me that they  
20 very succinctly identify the thrust of the discussions that  
21 we will be having today. And with apologies to him -- he  
22 can make his own comments later -- he said several things  
23 that I think are very significant, the first in speaking of  
24 the urban problems that we have.

25 "It is bootless to talk of solutions. There are

1 none. The best we can hope for is to achieve well considered  
2 change which will move us toward greater responsiveness to  
3 human interest and needs and to fuller realization of human  
4 values," his point being that there are no quick and easy  
5 solutions. There's a lot of work ahead.

6 The second quote: "The place to begin in an  
7 effort to achieve a sound distribution of responsibility  
8 and authority for decision making in urban regional setting  
9 is the state constitution." This, of course, is why we're  
10 gathered here today.

11 And the third comment; which is a very practical  
12 one: "Of course, one is not so removed from the living  
13 world to fail to be aware that there are vested political,  
14 economic, social and emotional interests in retaining the  
15 political arrangement of community life pretty much as they  
16 are today." In other words, we have some very real  
17 practical political and educational problems to accomplish  
18 these ends.

19 And the last: "It seems rather incongruous that  
20 resistance to change in this area of human affairs should  
21 be so great when man, by his own conduct, has put the very  
22 future of the race in jeopardy."

23 And I think that well states the importance of the  
24 matter we have today.

25 Now, as I told you earlier, we are fortunate to

1 have the Ohio State University College of Law as one of our  
2 two cosponsors in this discussion, and it is my pleasure to  
3 introduce to you at this point the Dean of the College of  
4 Law, Dean James Kirby, who will introduce our keynote  
5 speaker. Doctor Kirby.

6 DOCTOR KIRBY: Chairman Carter, distinguished  
7 delegates, as a representative of one of the cosponsoring  
8 organizations and of the host university here, I want to  
9 welcome you and commend you for your concern for your very  
10 important subject.

11 It seems quite appropriate that this continuing  
12 education facility should be the situs for your gathering to  
13 educate yourselves and prepare to educate the Ohio public  
14 in the area of constitutional revision. It also seems  
15 appropriate that the situs should be titled as provocatively  
16 as this splendid facility is: The Center for Tomorrow.

17 Our speaker comes in the flower of a full and  
18 distinguished career in scholarship, public service and law  
19 reform. A native of North Carolina, he attended the  
20 University of North Carolina, at Chapel Hill, where, in the  
21 surprisingly brief space of the period between 1926 and  
22 1929 he was awarded three of its degrees: Bachelor of  
23 Arts, Master of Arts and Political Science and the Juris  
24 Doctor, with honors. He quickly added to that a fourth  
25 earned degree at Yale University in 1930, the Doctor of



1 Juridical Science.

2 The period from 1930 to 1946 found him successively  
3 on the law faculty of the University of West Virginia where  
4 he became a full professor; in the private practice of law  
5 on Wall Street with a prominent firm; then as counsel and  
6 bond attorney to the Public Works Administration in Washing-  
7 ton and on active duty with the Navy in World War II where  
8 he rose to the rank of Lieutenant Commander. In that period  
9 he joined the faculty of the Law School of Louisiana State  
10 University, left there for the military service.

11 After the war he joined the faculty of Vanderbilt  
12 University School of Law, and he was in his first and only  
13 year there when a wise former president of this university,  
14 one Howard Landis Bevis, demonstrated his good judgment by  
15 recruiting our speaker to become Dean of the Ohio State  
16 University College of Law. He served for five years until  
17 1952 here as the Dean of this College, when it became the  
18 University's misfortune to lose him to the University of  
19 Pennsylvania where he served as Dean of their College of  
20 Law for 18 years, from 1952 until 1970.

21 Combined service of 23 years as a dean of two  
22 major colleges of law is one of the track records, I'm  
23 sure, of this particular hazardous occupation, and our  
24 speaker, in 1970, was able to return to the pursuit which  
25 most law deans sooner or later realize is their first love,

1 full-time professor of law.

2           During this period, though, he amassed an  
3 impressive record as a scholar and professional leader,  
4 becoming one of the nation's experts on state and local  
5 government. He authored several major treatises and texts  
6 in this area, including at least two contributions in law  
7 journals relative to the Ohio Constitution.

8           I could multiply his achievements and honors,  
9 but in order that you may hear more from him rather than  
10 about him, I will limit myself to two other areas: in the  
11 organized practicing profession, the American Bar Associa-  
12 tion, he has served as a member of its governing body, the  
13 House of Delegates, and is one of the few people to ever  
14 serve as chairman of two very different sections of that  
15 association. From 1949 to 1951, he was chairman of the  
16 ABA Section of Local Government, and during the period  
17 1966 to 1968, he served as the first chairman of the ABA  
18 Section on Individual Rights and Responsibilities.

19           In that smaller national fraternity of law  
20 teachers, he was honored in 1970 by being elected to the  
21 highest national position of a law teacher, the difficult  
22 and challenging task of President of the Association of  
23 American Law Students.

24           So, you can see that for many reasons our speaker  
25 is an appropriate one, and it's a real personal privilege

1 on my part to welcome back to Ohio State and Buckeye  
2 Country and to present to you the Honorable Jefferson B.  
3 Fordham.

4 PROFESSOR FORDHAM: Mr. Chairman, ladies and  
5 gentlemen, let me turn to my good friend Jim and thank him  
6 for that gracious introduction. That was more than kind,  
7 although as I look over the past of which I have been a  
8 part and at this fine university and elsewhere, I had to  
9 observe his reference to my being here and there. I am  
10 forced to recall an experience I had in this state which I  
11 mentioned to some others last night, and I hope those who  
12 heard it will suffer the repetition, an experience I had at  
13 Marion, the home town of President Harding.

14 I was up there speaking before the Kiwanis Club  
15 and a nice gentleman was introducing me and he referred to  
16 the fact this bloke has been here and there over a period  
17 of years, and the superintendent of schools was sitting  
18 next to me and he turned to me and said, "Aha, you can't  
19 hold a job, can you?"

20 Well, in any event, these remarks were well  
21 intended and they are warmly appreciated. You can apply a  
22 very considerable discount -- We'll get down to business.

23 This subject to which we address ourselves, may  
24 I say informally, before I get to my formal remarks, which  
25 are not unduly extended, I will assure you, as of a

1 character that the importance of which could not be over-  
2 stressed, and so while we don't have solutions and I  
3 certainly don't profess to have special wisdom, I do hope  
4 we have a profound commitment to trying to approach -- to  
5 the matter of trying to approach these problems with real  
6 conviction; that divided interest of our country and our  
7 local governments are at stake and that we, as participants  
8 in the effort to make our society viable and meaningful,  
9 must somehow rise above individual self-interest.

10 Now, before I proceed, let me say one or two  
11 things, if you will indulge me, about my association with  
12 the University and how much I cherish it. It is true that  
13 I didn't last here but five years but those were crowded  
14 and extremely rewarding years for me and I lay enormous  
15 store by that association both in terms of the college of  
16 law and its people and in terms of the lovely people in  
17 this general community whose friendship it was my good  
18 fortune to have. So I come back with great pleasure and  
19 with the hope that I can at least stir things up a little  
20 bit, although what I may say may be something that you wish  
21 to set aside with as great facility and quickness as you  
22 may.

23 The topic I have chosen, strangely enough, is,  
24 "Ohio Constitutional Revision --What of Local Government?"  
25 And I want to say that after I have presented these general

1 observations, trying to lead into some of these problem  
2 areas in this larger field, that I hope there will be some  
3 discussion from the floor. I think that's useful and  
4 certainly would be helpful to me in re-examining this subject  
5 in the light of thoughtful observations from others.

6           These are difficult times in which to pursue  
7 state constitutional revision. This is not to speak dis-  
8 couragingly of the enterprise. It is, rather, to be  
9 realistic about the psychic, social, economic and political  
10 complexities of life at this state in the course of human  
11 affairs. I need only to suggest that you reflect upon the  
12 extraordinary changes in community life and in the human  
13 condition generally since the Ohio Constitutional Convention  
14 of 1912 and to bear in mind that state constitutions have  
15 not been political documents written for the ages.

16           We are here to discuss Ohio constitutional  
17 revision in relation to local government. The facts of  
18 life tell us to pursue the matter in larger than state con-  
19 text. We must be conscious of all major levels of community  
20 from the world community to the tiny village. Such is the  
21 interdependence of the members of the genus homo.

22           While one does not see local government in direct  
23 relationship with the world community or an international  
24 regional community, there are pervasive shared problems  
25 that should be of common concern, notably restoration of a

1 sound system of relationship of man in the natural order and  
2 the achievement of a system of social order free of the  
3 overhang of nuclear armament. And we have a national  
4 government with responsibility in external as well as  
5 internal affairs with respect to such matters. What it  
6 does as to them plainly conditions what state and local  
7 units may do in their spheres.

8 On the domestic scene the national government  
9 stands astride a national economy with unique capacity both  
10 to influence economic life and to draw upon the private  
11 sector for communal purposes. What may be beyond its broad  
12 power of direct action may yet be influenced very strongly  
13 by the leverage of federal funds. So much is this the case  
14 that the mass media and very many people generally simply  
15 assume and commonly refer to local units as being in the  
16 posture of acting under federal aid programs with authority  
17 drawn from the national government itself as distinguished  
18 actually from the national government making donations or  
19 grants subject to conditions attached to those grants.

20 The lesson in all this for me is not that state  
21 and local governments are headed for limbo. I do not  
22 believe for a moment that they are. The country is so large,  
23 so complex and so diverse that some decentralization in  
24 decisionmaking and administration is indispensable. More-  
25 over, local autonomy is a political value that is far from

1 dead. As to so many of the problems which vex us there  
2 are roles for all levels of government to play. The lesson  
3 for those concerned with state constitutional revision is  
4 that the states should strive to maintain the greatest  
5 flexibility of action. They should direct constitutional  
6 change to strengthening basic state and local governmental  
7 institutions and processes with stress upon responsible action  
8 rather than upon limitations of authority. And I stress  
9 that as according to my best lights, as fundamental in the  
10 undertaking with which the state constitutional revision  
11 commission is charged.

12 Representative government. Local government  
13 should be viewed in relationship to the basic state policy-  
14 making body, the legislature. I do not have the legislature  
15 of Ohio particularly in mind when I say that our political  
16 system has defaulted with respect to the provision of a  
17 strong representative body at the state level. That  
18 institution is the key organ both in general policymaking  
19 and in the distribution, within the constitutional frame-  
20 work, of responsibility and authority for decisionmaking and  
21 execution. This bears pervasively upon local government,  
22 viewed in the large, even in a home rule jurisdiction.  
23 Thus, it is that I go afield to say that a central problem  
24 of a state constitutional convention, or whatever method  
25 you use to achieve change as to this central problem of



1 those who bear this responsibility, is that of going as far  
2 as constitution revisers can in strengthening representative  
3 government. We can't do it by polling the citizenry as  
4 much as we recognize that the problems and the decisions are  
5 of primary concern to them. I put it this way because  
6 legislatures as institutions occupy a low place, unhappily,  
7 in public esteem, a long-existent condition which is not  
8 encouraging for reform efforts.

9           The voters of Ohio have already responded to the  
10 Supreme Court's one-man one-vote principle by establishing  
11 through constitutional amendment a fixed membership for  
12 both houses of the legislature with a single-member district  
13 pattern of 99 house seats upon which is superimposed 33  
14 single-member senatorial districts, each covering three  
15 contiguous house districts. The design is to avoid cross-  
16 ing county lines in defining house districts where the  
17 population ratio for such districts is less than county  
18 population, the taking into consideration of local govern-  
19 mental institutions and concerns.

20           Does this have any special significance for local  
21 government? In general, one-man one-vote has afforded more  
22 representation from the suburbs. They are the areas of  
23 major population growth. And I am afraid that this does  
24 not provide assurance of greater legislative sensitivity to  
25 central city problems or problems of regional perspective,

1 and the reason for this is this matter of simple human  
2 nature. There are great differences in orientations,  
3 interest and outlook. Some people live in the suburbs, in  
4 a sense, to achieve insulation from the urgent and the per-  
5 plexing problems of the central city.

6           Should the state constitution speak expressly on  
7 the subject of representation on local governing bodies?  
8 The Supreme Court has applied one-man one-vote to general  
9 function local units like counties and cities, towns and  
10 villages, and even to an elective junior college district,  
11 the board of such a district, with taxing and borrowing  
12 power. This last is rather extraordinary because it does  
13 not involve a body of general legislative confidence or  
14 responsibility but, nevertheless, the court has extended the  
15 matter this far. Therefore, its applications for local  
16 government are that much more pervasive. It is my notion  
17 that it would be just as well to have the constitution  
18 remain silent on the matter. The subject is still under-  
19 going development in Supreme Court adjudication and there  
20 are related matters, such as the impact of multi-member  
21 districts upon racial and political groups, which are yet  
22 in a somewhat unsettled state, despite the recent rejection  
23 only this year by the high Court of an attack upon multi-  
24 member legislative districts in the neighboring state of  
25 Indiana.

1           Now, a word about popular legislation. In 1912 an  
2 Ohio constitutional amendment, as most of you are aware, I'm  
3 sure, made general provision for the initiative and refer-  
4 endum in municipalities but left it to the legislature to  
5 implement the general scheme by providing the appropriate  
6 procedure. The legislature borrowed from the constitutionally  
7 articulated state-level scheme and ordained that an ordinance  
8 adopted expressly as an emergency measure would not be sub-  
9 ject to referendum. Since the Ohio courts do not review the  
10 finding of emergency -- in other words, take the declaration  
11 of emergency by the local government body as final -- the  
12 local governing body has been left in the saddle so far as  
13 the legislature is concerned. The significance of this,  
14 it must be obvious from the standpoint of the relative dig-  
15 nity of action by the legislative body; that is, the  
16 governing body, an action in which the voters themselves,  
17 the so-called sovereign of the local unit, take by  
18 initiative and referendum or by the referendum alone the  
19 appropriate occasion.

20           It is to be observed, however, that the legisla-  
21 tive posture of this matter has not made the ultimate dis-  
22 position of it. The Supreme Court of Ohio has held that  
23 home rule power does extend to this subject, so a charter  
24 municipality may regulate the relationship of councilmanic  
25 action to voter action in a way to outlaw the emergency

1 clause device and give popular legislation higher dignity  
2 than councilmanic action.

3 Now, this subject calls for further exploration  
4 than I can give it. I am not saying that there is something  
5 ultimate about having the action of the electorate  
6 definitive in every kind of a situation. I would expect to  
7 comment on this further with particular reference to  
8 taxation and appropriations in a moment.

9 It seems to me that there are no evident needs  
10 for express constitutional provision for popular legisla-  
11 tion in municipalities at least so long as voter participa-  
12 tion and policymaking can be provided for in a home rule  
13 charter on that. It is optional with the local community.

14 On the basic question whether popular lawmaking  
15 should be available at all at the local level, I have no  
16 serious doubt that it should. I say this with awareness of  
17 recent experience supporting the view that the voters are  
18 likely to be less receptive to proposals, like fair housing  
19 measures, which are designed to promote equality of oppor-  
20 tunity without regard to group characteristics, than are  
21 elected representatives. The latter are not always warmly  
22 committed to human rights but they are conscious of the  
23 political force of minority groups. This state of affairs  
24 is troubling but the ultimate test of a just society, in  
25 any event, is whether the people at large support the

1 equality before the law and equality of opportunity and the  
2 existent judicial restraints which can control deviations.

3           Whether tax and appropriation measures for  
4 regular governmental operations should be subjects of  
5 popular legislation is definitely another matter. I think  
6 -- and I'm fairly strong on this judgment -- that they  
7 should not, for the reason that if appropriations and tax  
8 measures are subject to popular approval insofar as these  
9 measures are necessary for the stable and orderly conduct  
10 of local affairs, that you don't have the stability and  
11 the predictability which the needs of the community seem to  
12 me to dictate.

13           Now, let me speak briefly about home rule. I do not  
14 wish to pre-empt what I'm sure is a more deep running dis-  
15 cussion of this subject which is to follow, but I am afraid  
16 that even though I won't dwell on the subject, that I would  
17 not do justice to my assignment unless I did look at it, this  
18 matter of home rule and taking a general overview of the  
19 problems of local government from a constitutional per-  
20 spective in Ohio.

21           I had occasion some years ago, when I was out  
22 here, to do a little research in this area, digging into  
23 the records of the Constitutional Convention of 1912. I  
24 found them a very, very interesting study. Let me remind  
25 you that back in 1912, the delegates -- at least some of the

1 delegates at the State Constitutional Convention were quite  
2 aware that the traditional home rule concept of a grant of  
3 home rule power which was rested upon a distinction between  
4 municipal affairs, as to which home rule obtained, and  
5 state concerns, where legislative superiority and privacy  
6 controlled, that this distinction was not on firm ground.  
7 They questioned it. And I agree with them. It's a queasy  
8 and shifting business. Governmental functions are not  
9 inherently either state or local in nature. What might be  
10 held to be local at one stage of the game in a few years  
11 might be regarded, because of the change in societal con-  
12 ditions, regarded by the courts as of such a general  
13 character as to be identified as a state concern. So the  
14 delegates at the convention tried to do something about  
15 this. They eschewed the example of California and other  
16 states which had embraced this old formulation, this old  
17 economy. But what they did, I think, was not very much  
18 different. The Ohio provision, as you remember, Section  
19 3 of Article 18 of the State Constitution confers upon  
20 municipalities all powers of local self-government. I'm  
21 afraid that phrase doesn't really move us very far. It  
22 still has involved somewhat of the same distinction. And  
23 I think this is demonstrated by experience in the case law  
24 in this state since 1912.

25 It is very interesting that among the delegates

1 to the convention in 1912 was a member of the history  
2 faculty of the Ohio State University, Professor Knight, and  
3 he articulated a notion about home rule which I borrowed  
4 and have been merchandising, openly. I don't regard this  
5 as any form of larceny or theft or what not. But, never-  
6 theless, I do take this highly appropriate occasion to  
7 acknowledge that I drew this desire from him.

8           The idea was one which urban leaguers in the  
9 state were pressing, in any event. He said so at the  
10 convention. And that was this: that the constitutional  
11 grant of home rule should not be like that in California.  
12 What it should be is a broad grant to municipalities  
13 which were to have home rule powers of all powers that the  
14 legislature might, within its plenary power, confer upon  
15 local government, subject, however, to the paramount  
16 authority, the legislature, to come along and impose by  
17 general statute limitations, exceptions or exclusions as it  
18 thought the general interest demanded. In other words, the  
19 municipality would start out with the whole works. It  
20 would not have any problem of having to run to the legisla-  
21 ture to get enabling legislation for this or that, and the  
22 legislature would bear the political responsibility for  
23 doing anything to qualify it.

24           Now, this conception, it seemed to me, involved  
25 a very sound and flexible approach, and so I articulated it



1 in a draft of Model Constitutional Provisions on Municipal  
2 Home Rule back in 1953. These were published by the  
3 American Municipal Association, now known as the National  
4 League of Cities. And this notion has gained some currency.  
5 The state of Missouri, which was the first state to adopt  
6 home rule -- that was back in 1857 -- has only this fall,  
7 October, adopted a constitutional amendment which gives up  
8 the old economy and embraces this concept that I derived  
9 from Professor Knight. So, if I may try to show that I  
10 have at least read two poems, if I do not have any further  
11 accomplishments, I'd like to recall one of Tennyson's  
12 poems which seems to have some pertinency here. As a young  
13 man, Tennyson wrote Locksley Hall, as a very young man.  
14 When he was in his 80's he wrote a poem called Locksley  
15 Hall Sixty Years After. This is 1972 coming up. The good  
16 professor put forward this idea in 1912, so isn't this the  
17 occasion to recall Knight Theory Sixty Years After?

18 Fairly early in the game the 1912 Ohio grant of  
19 substantive powers was interpreted to extend directly to  
20 all municipalities and, thus, did not depend upon the  
21 adoption of a home rule charter. This is a very important  
22 distinction. A city or village didn't have to adopt a  
23 charter to have these, all these powers of local self-  
24 government. So the principal advantage in adopting a  
25 charter was not to have a charter as an instrument of grant,

1 granting powers, the principal advantage in it was to set up  
2 a framework of government. It was significant from that  
3 standpoint. And there also was a further advantage. You  
4 could disavow powers, you could exclude powers if you  
5 wanted to in your charter. But under this concept you  
6 certainly didn't have to look to a charter as a social  
7 authority. The whole works, as far as local self-government  
8 was concerned, as far as this clause went, was taken care of  
9 by the direct grant in the constitution.

10 It is interesting, however -- I think this is  
11 probably still the case. If it's not, someone will correct  
12 me -- that of the hundreds of villages in the state, units  
13 of less than five thousand, very few have drafted and  
14 enacted or adopted home rule charters. A great many of them  
15 don't pay much attention to home rule but simply operate  
16 under the general statutes. That's my apprehension. If  
17 I'm not au courant on this, I am sure someone will correct me.  
18 So I have a suggestion. I doubt that anybody who is  
19 generally disposed in favor of home rule would like the idea  
20 of taking home rule power outright away from the villages,  
21 so that one way to handle this would be to change the con-  
22 stitutional scheme, as interpreted by the courts, and say,  
23 as the Model Constitutional Provisions do, to say that the  
24 local unit, whether small or large, would not have the sub-  
25 stantive home rule powers unless it adopted a charter. If

1 it adopted a home rule charter of government, then it would  
2 have this plenary grant of home rule power and that way  
3 you'd have a clear line within the units which were home  
4 rule and those which were operating under general law. At  
5 the same time, you would not deny to the smaller units the  
6 home rule posture, should they wish to assume it.

7 Now, on this terribly difficult and vexing matter  
8 of regional problems, we could spend weeks, and the most I  
9 am able to do now is just to touch on it to try to leave it  
10 not completely in shadow so far as my limited capacity to  
11 deal with it is concerned.

12 The first question is: Is it enough in a state  
13 constitution to enable appropriate action with relation to  
14 urban regionalism? Is it enough to achieve that, simply  
15 rely upon the plenary power of the legislature? Now, as  
16 you know -- all of you know this whether you're lawyers or  
17 not -- theory of our national union involves the concept  
18 that the legislative powers of the state legislature are  
19 plenary, full and complete, except as they may be limited  
20 by the federal constitution, the bill of rights or declara-  
21 tion of rights, the state constitution or other limitations  
22 that might be specifically imposed in the state constitution  
23 or by limitations implicit in the national system, the  
24 federal system.

25 So that, really, the question is: Why wouldn't

1 it be enough just to rely upon that one little clause in  
2 the first section of your legislative article of your  
3 constitution; namely, the legislative power of this state  
4 is vested in the people -- I beg your pardon -- is vested  
5 in the legislature. This, of course, is subject to whatever  
6 provision you make with initiative and referendum.

7 Why isn't that enough so far as putting the  
8 legislature in proper position to deal with regional prob-  
9 lems? Well, it may be, but this is an area that is so  
10 difficult and so complex that there has been a disposition  
11 in other states which have engaged in constitutional  
12 revision recently and the Model State Constitution, 1964  
13 edition, there has been a disposition to put into that  
14 instrument, too -- it's there, a broad provision authorizing  
15 any governmental cooperation, not only with other local  
16 units in your own area but with the state, with units in  
17 another state or with the national government. I am not  
18 sure about all the implications of a thing of this sort,  
19 but the theory of putting it in is that the need of any  
20 governmental cooperation is so great that it is best to go  
21 ahead and be explicit on it. And I wouldn't quarrel too  
22 much with that, although, in general, I believe in a simple  
23 pattern operating under the very broad plenary authority of  
24 the legislature.

25 Now, as matters now stand in this state, the

1 constitutional provision for county home rule, mind you,  
2 recognizing that problems overreach municipalities and  
3 townships and that county-wide jurisdiction may be  
4 desirable but it does not permit county assumption of juris-  
5 diction over these matters of townships and municipal  
6 affairs, does not permit such assumption of jurisdiction  
7 without clearing the incredibly high hurdle of the well-  
8 known four-way vote in the governmental units in the county.  
9 As a consequence, the achievement of county home rule in  
10 this state is almost out of the question. I must say that  
11 I have no fresh formula to promote, but I do hold myself  
12 free to say that these political obstacles to county juris-  
13 diction and county perspective should certainly be greatly  
14 reduced, and I leave it to the wisdom of this commission,  
15 Mr. Carter's commission, to come forward with a method of  
16 doing it.

17 Of course, county lines do not necessarily define  
18 an urban region and, thus, a county approach may not fit  
19 the needs in this or that region, not enough to have the  
20 county approach. There should be the flexibility of a  
21 regional configuration which does not fit necessarily on a  
22 county pattern but might overlap several counties, so I  
23 suggest that the constitutional authorization with any  
24 governmental cooperation be on a very flexible basis but  
25 it is highly desirable.

1           In the recent revision of the Pennsylvania consti-  
2           tution, if I may be mildly parochial, there is a grant of  
3           such authority and, beyond that, the legislature has been  
4           authorized to provide for government of areas involving two  
5           or more local units, which is a kind of at least small  
6           regionalism. Now, one interesting thing about this is, what  
7           do you do with home rule in relation to regionalism? It  
8           does seem to me that you do need a general function unit  
9           of local government upon which to confer home rule power, and  
10          we haven't devised anything like that. Now, there are two  
11          ways to do this, at least, it occurred to me. The first is  
12          to have actual governmental consolidation, as might be the  
13          case if this county home rule thing worked, so you would have  
14          a general function unit of regional unit, then home rule  
15          power would seem to fit. Or it is conceivable you might  
16          have an overlay of government of a regional character which  
17          had powers and responsibilities relating to matters which  
18          were regional in sweep. And with respect of which the  
19          regional government had the appropriate territorial juris-  
20          diction. That would be a little unusual to have this con-  
21          cept of home rule apply to that because it is a limited kind  
22          of government, to begin with, and you have to do some  
23          fashioning, but I suppose you could give them, as I think  
24          about it, power of a home rule quality; that is, full power  
25          insofar as their particular functions were concerned.

1           In any event, these are some of the considerations  
2 which I am sure will be given very profound and con-  
3 structive thought in the deliberations of the commission.

4           At the present time I must say that I don't know  
5 any way that we can proceed to provide areal or regional  
6 home rule without setting up governmental jurisdiction  
7 arrangements upon which to confer home rule powers.

8           Now, a word about a subject that you haven't  
9 heard at all for years, and that's environment, ecological  
10 matters. This is no fooling. This is something that  
11 involves us for keeps. It is true that a good deal of talk  
12 about this subject may not be profound, but I don't believe  
13 that the advocates of action at all levels of government  
14 about this problem have been operating on a foolish basis.  
15 The underlying concern, I think, is profoundly well grounded.  
16 That man is a creature in nature, he is not something  
17 apart. And his very future -- very future depends upon his  
18 recognition that he must live as a creature in nature; he  
19 is not above it; and he is very much a creature of nature  
20 as the robins and the bluejays. If he tries to depart from  
21 this in a way that involves, for example, unlimited growth  
22 in the sense of productivity, for an increasing population,  
23 he will continue, as Jacques Cousteau has said, to make  
24 the seas a cesspool and to damage the components of our  
25 environment in other respects, which may be irretrievable.



1           So, I say that all levels of government are, of  
2 necessity, involved in environmental problems. The revised  
3 Illinois constitution speaks to the subject. This was  
4 embraced, as you will recall, last December. It does this  
5 from the standpoint both of individual rights and of  
6 declared state public policy to provide and maintain a  
7 healthful environment. The individual may enforce his right,  
8 under the sixth section of this brief article, against any  
9 party, governmental or private, through legal proceedings  
10 subject to reasonable legislative limitation or regulation.

11           It remains to be seen how this broad commitment  
12 works out. I have been troubled by the thought in the past,  
13 in reflecting upon this subject, that grand phrases in the  
14 organic law might so far outmatch the realities of policy  
15 effectuation in this area of concern as to raise doubt as to  
16 putting them in at all; that is, putting these provisions in  
17 at all. The Illinois provisions do seem to me to have sub-  
18 stantial potential for legislative and judicial implementa-  
19 tion. I say this with recognition that they present to a  
20 logical mind some very real questions but I don't regard  
21 them as altogether hard to interpret.

22           Now, a word about the subject of which you may  
23 have heard; that is, public education. While public education  
24 is a major subject unto itself, which bespeaks the fullest  
25 consideration, traditional decentralization in the public

1 school system brings it within the overview of this local  
2 government seminar. I have no doubt about that.

3 At the present time the financing of primary and  
4 secondary education, with basic reliance upon the local  
5 property tax, is under severe strain. Education is absorbing  
6 over 50 per centum of ad valorem tax receipts the country  
7 over. And the most recent year for which I have figures,  
8 the year before last, the total of local property taxes was  
9 about 30 or 31 billion dollars in the country and over half  
10 of that went to educational purposes for the local schools.  
11 Now, this kind of reliance on the local property tax  
12 certainly involves a situation that presents grave difficulty  
13 by itself, but that's not all. On the average, state -- and  
14 even at the present time, it must be acknowledged that on  
15 the average, state and federal funds cover more than 40  
16 per centum of the total devoted to schools. At the same  
17 time it is to be noted that taxable values in school dis-  
18 tricts vary widely over a given state, and unless there is  
19 genuine state equalization on an egalitarian basis, the  
20 amount spent per pupil will vary widely over the state.

21 I say this leading up to the reference in the  
22 recent, much discussed, California case. I am sure that most  
23 of you have heard something about the decision of the Supreme  
24 Court of California in the case of Serrano against Priest.  
25 There the court determined, as a matter of law, that to make

1 the quality of primary and secondary education, viewed in  
2 terms of dollars spent per pupil -- to make this, this  
3 quality of education viewed in these terms, dollars spent  
4 per pupil -- to make this a function of the wealth in a  
5 school district -- and they identify wealth with taxable  
6 values -- to make it a function of wealth denies equal pro-  
7 tection of the law under the 14th Amendment of the Constitu-  
8 tion of the United States, equal protection of the law to  
9 students in poor districts.

10 Now, in the question period, you may want to  
11 explore this a little bit further, but that's the gist of  
12 it. It's the idea of the concept of equality assured by  
13 this fundamental constitutional safeguard as applied to  
14 school matters, meaning, in effect, that insofar as  
15 financial support for the public schools is concerned, you  
16 can't have a pattern of school expenditure per pupil which  
17 depends upon economic strength measured in terms of taxable  
18 values of your various local school districts because they  
19 are so uneven over the state.

20 What the court is saying is that we take a state  
21 view of this. Each protection is looked at on a state  
22 basis and not the basis of the local school district and  
23 on the state. There are these vagaries and wide differences  
24 between school districts. It is very interesting to point  
25 out that they are talking about discrepancies or variations

1 or discrimination by district, not by individuals, which is  
2 the more common way that equal protection question is  
3 raised.

4 So, you have this important case which has not been  
5 finally decided. It was decided on a preliminary basis in  
6 the first instance. It is going back to the lower court for  
7 trial on the merits and we'll find out where they come out.  
8 It may ultimately get to the Supreme Court of the United  
9 States, this question may, either from California or from  
10 some other jurisdiction. I am fairly confident that it will.

11 So that if this principle enunciated by the  
12 California court prevails, surely there will be a major  
13 change in the financing of our public school system over  
14 the country. Now, whether this is going to be worked out  
15 on the basis of redefining your school districts on a  
16 larger basis so that you'll have a roughly even tax base in  
17 every big school district in the state but no small ones,  
18 whether it is done that way or the state takes it over as  
19 a whole or whether some other pattern may develop remains  
20 to be seen; but there you have it.

21 And anyone who is concerned with state constitu-  
22 tional revision in this or any other state has to take into  
23 account this kind of thinking, this kind of problem. This  
24 may not be the answer. I have some serious doubts about  
25 certain aspects of this thinking but, nevertheless, it is

1 in recognition of a severe problem, these disparities in  
2 educational opportunity, and here you have a situation where  
3 the courts, as they have done with respect to redistricting  
4 and enforcement, may force the hand of the state legislatures  
5 and perhaps the people of the state as to the constitutional  
6 revision in doing something to achieve a different pattern  
7 of school financing which will move toward a more egalitarian  
8 basis of educational opportunity in our public schools.

9 I might add, with respect to education -- I will  
10 be through shortly, Mr. Chairman. I might add, with respect  
11 to education, that we all are aware that concern for local  
12 autonomy in public school affairs is something that is  
13 ubiquitous in this country. As a matter of fact, at one  
14 time, believe it or not, we had over a hundred thousand  
15 school districts in the country and, as you know, most  
16 schools operate independently of the cities. About 75  
17 percent of our school-aged children are in schools which  
18 are operated by independent school districts. Today the  
19 number of school districts is less than a fifth of what it  
20 was at the peak. It is under 20,000 and, of course, this  
21 is forced by a recognition that these smaller districts are  
22 simply not viable in terms of the tax base, in terms of the  
23 size of the community and the student population, and so on.

24 Let me say that insofar as Ohio is concerned that  
25 Ohio might wish to retain a strong commitment to public

1 education in its constitution, as it does now. There is a  
2 constitutional provision which calls upon the legislature  
3 to provide a good system of public education, and so on.  
4 Many states have such provisions, and Ohio may wish to do  
5 this. If it wants to go so far as to make it plain that  
6 the total tax burden should be on the state is another  
7 matter. The new Illinois constitution seems to go just  
8 about that far, to say, at least, "the primary burden of  
9 financing is a state burden," so this is a very grave  
10 question, and I'll leave it with you, which is the easy  
11 thing to do.

12 Now, on this extremely simple and facile problem  
13 of local finance. As to that, there is no doubt about it,  
14 the commission has an enormous challenge of great diffi-  
15 culty, speaking in a serious vain. Certainly, societal and  
16 governmental changes have outrun the existing dispensation,  
17 as you find it in most state constitutions, including that  
18 of this great state.

19 First, on the revenue side, there is the familiar  
20 long-time reliance upon the property tax. As you know, the  
21 levy in this state is subject to a constitutional ceiling  
22 on rates of one per centum of assessed valuation, a ceiling  
23 which may be exceeded with electoral approval in the given  
24 taxing unit or as provided by home rule charter. The  
25 question is, is it wise to leave decision making on taxation

1 needed to keep public education or basic municipal services  
2 going at an acceptable level, to leave this to the voters at  
3 the polls? I have already suggested that I don't think so.  
4 And I repeat that.

5 I understand, by the way, that our Swiss friends  
6 across the way, to whom we owe the initiative and refer-  
7 endum, live with arrangements which make less taxation and  
8 appropriations subject to referendum; but as far as I'm  
9 concerned, in our society, my question still remains. So  
10 I suggest that, as regards the abnormal property tax and  
11 the way it is constituted under the constitution, that the  
12 matter of the electoral voice in going above the limited  
13 level by the one per centum should be seriously reexamined.

14 What I should like to try to dig a little more  
15 deeply into, I make bold to challenge the whole property  
16 tax system. I think it is a very dubious basic tax. Sure,  
17 it's a natural thing to use. Our antecedents used it in  
18 England, and so on, and it is obvious property is an easy  
19 thing to get at. It's there, you can't move it out of the  
20 state very well -- the land, at least -- and so it is  
21 historically and sort of a natural way, an easy thing to  
22 look to as a basis, your property, as a basis for determining  
23 how much you are going to draw from the individual; and  
24 this is a way of distributing the burden among the  
25 citizenry. But we all know that the tax is not on property.



1 The tax is on people. The property mechanism is a means,  
2 as I have said, of distributing the burden and measuring  
3 the tax, and so on. So it does seem to me that it is time  
4 to reexamine the property tax in extenso.

5 Let me say this, however, at this point. If the  
6 property tax is to be retained, the constitutional limits  
7 should be removed and discretion as to the limitation be  
8 left with the legislature. Why preserve a fixed limit in  
9 preference to freedom of policy choice? It is to be borne  
10 in mind that the tax limitation covers debt service levies  
11 on bonds, principal interest requirements, as well as levies  
12 for current expenses, which means, of course, it operates  
13 as an indirect debt limitation on unvoted general obligation  
14 bonds.

15 What I am brought to at this state is a suggestion  
16 that a revised Ohio constitution eschew reliance upon the  
17 property tax, except to the extent it may be unalterably  
18 committed to cover principal and interest requirements on  
19 outstanding general obligation bonds, and leave the legisla-  
20 ture and local units in a position to rely on other sources  
21 of revenue, notably, graduated income taxes, consumption  
22 taxes and charges for services. It is highly important  
23 that the legislature be left in a position to take the  
24 requisite state action -- state action -- to achieve  
25 rational and constructive coordination of national, state

1 and local revenue systems insofar as the state is concerned.  
2 I am aware that a small local unit can hardly be expected  
3 to administer a graduated income tax, but that doesn't  
4 defeat us. It is possible for a local unit to levy an  
5 income tax or sales tax to impose it as a supplement to a  
6 corresponding state tax. For example, the rate of the local  
7 income tax might be a fraction of that for the state. Thus,  
8 the supplement could be collected by the state for the  
9 single administration. What is collected in the way of  
10 local revenues be returned to the levying unit.

11 A number of states turn to a different aspect  
12 of taxation. We find that forces committed to motor  
13 vehicles in one way or another have been influential enough  
14 to obtain constitutional dedication of motor vehicle and  
15 gasoline tax revenues to highway purposes. This exists in  
16 Pennsylvania, as well as in this state, and I am sure in  
17 others. Now, of course, we all like to have automobiles.  
18 We depend upon them. But it does seem to me that our  
19 commitment to them has had an incredibly powerful and per-  
20 vasive influence upon the entire society, and upon urban  
21 communities and regions in particular, and not always in a  
22 wholesome sense.

23 The tax dedication just mentioned is a painful  
24 expression of that commitment. It is unsound, in the first  
25 place, to make a constitutional dedication of revenues to

1 the exclusion of the exercise of legislative discretion in  
2 the use of public funds as unfolding developments and  
3 societal need indicate. In other words, the level of  
4 government at which decisions as to how tax money shall be  
5 spent should not be the constitution. The money should  
6 flow into the general funds and the legislature should be  
7 the responsible body to determine how the money shall be  
8 spent for authorized public purposes, or so it seems to me.

9 The instant dedication is particularly bad  
10 because it nurtures a great distortion in the social  
11 circulatory system, which is increasingly hazardous to the  
12 social organism.

13 Social circulatory system consists not simply of  
14 highways but all sorts of developments: obviously, mass  
15 transportation, your various termini, facilities for walking,  
16 for example - people still can walk a little bit. This is  
17 just to scratch the surface, and I think it is a proper  
18 conception to speak of the whole integrated -- unhappily,  
19 not too well integrated -- combination of these various  
20 components as a circulatory system for the whole social  
21 organism.

22 It seems to me what has happened with respect to  
23 this tax dedication is to create a serious distortion in the  
24 circulatory system and one which, instead of being simply an  
25 organic instrument to serve the basic organism, is something

1 which influences the character and shape of the organism.  
2 All you have to do is look at your suburban sprawl to  
3 illustrate that. That's enough of this. This is a con-  
4 troversial subject, but I'm sure this generous audience will  
5 permit me an expression of my opinion, for whatever it's  
6 worth.

7 I would say, to the extent these tax moneys are  
8 dedicated and pledged through outstanding bonds, that the  
9 state, of course, honor its commitment. But beyond that I  
10 would urge that this commitment of automobile revenues,  
11 gasoline revenues to highway purposes, that the commitment  
12 of these funds to highway purposes is not sound and that it  
13 should be knocked out of the constitution.

14 Now, when I comment to local borrowing, I make a  
15 fresh assault on the property tax. Traditionally, general  
16 obligation bonds of local units have been supported by a  
17 commitment to levying and collecting property taxes from  
18 year to year to cover debt services. The Ohio constitution  
19 exacts that: levy that there be taxes provided from year to  
20 year, and I interpret this to mean property taxes, so that  
21 we have got a commitment in the constitution on this. The  
22 time has come to break the shackles of the property tax  
23 system. Just as the corporate -- and this is particularly  
24 true with respect to local finance -- Just as the corporate  
25 mortgage , which used to be regarded as the necessary

1 security behind corporate bonds -- just as this has been  
2 largely outmoded by economic realities, the security behind  
3 municipal bonds should be seen, I think, to be the general  
4 strength, stability and responsible management of the  
5 borrowing community. So it is, of course, with the formal  
6 obligations of the United States; the commitment is of the  
7 general faith and credit of the borrower without reference  
8 to any particular tax source of payment.

9           So, for the future, issuance of municipal obliga-  
10 tions comparable to corporate debentures might well be the  
11 order of the day.

12           The home rule amendment of 1912 expressly  
13 authorized municipalities to issue mortgage revenue bonds  
14 to finance utility plants and systems. As you all know,  
15 revenue are bonds which are issued to finance facilities  
16 which will produce enough revenue to cover principal and  
17 interest as well as to operate the facilities.

18           Now, the Ohio scheme was to have a mortgage in  
19 addition. Well, that may have been a conception back in  
20 1912 but I wonder whether the mortgage feature is significant  
21 anymore, whether or not simple revenue bonds are not the  
22 sort of thing that would be suitable in the current stage  
23 of public finance. So, it may be that the constitutional  
24 provision with respect to mortgage revenue bonds is really  
25 surplusage at this stage and that the use of simple revenue

1 bonds might be the order of the day.

2           So, I guess I have touched rather vaguely upon a  
3 lot of things. There is a great deal in this subject. Let  
4 me come to a close in this way. I like to think that for  
5 constitutional revision purposes there runs through what I  
6 have said a consistent strain of thought, even though there  
7 are other topics involved. I say this: the keynote is  
8 flexibility, which, as I see it, bespeaks constitutional  
9 change directed to the strengthening of basic state and  
10 local governmental institutions and processes with stress  
11 all the while upon responsible action rather than upon the  
12 hedging about of authority.

13           You have been very intelligent. I thank you.

14           (Applause.)

15           CHAIRMAN CARTER: Well, thank you very much, Dean  
16 Fordham. That was certainly a very challenging and  
17 incisive overview of some of the problems that are facing  
18 all of us in this room who have an interest in constitutional  
19 reform in the area of local government.

20           As always, the tyranny of time is a difficult  
21 matter in a session such as this, and I have promised Ann  
22 that we would keep on schedule, so I am just going to have  
23 to say that we don't have the time for questions, much as  
24 I would like to, for Dean Fordham.

25           Now, Ann has asked me to announce -- Incidentally,

1 is Ann in the room now? No, she still isn't. She is still  
2 busy. I am anxious for you to know who she is.

3 She has asked me to make the announcement that  
4 coffee is being served in the exhibit room which, as I  
5 understand it, is just past the aisle that you came into,  
6 the registration desk. However, we do want to keep on  
7 schedule, so, rather than standing around and having coffee,  
8 we are going to ask you to pick up the coffee, if you want  
9 some, in the coffee room and bring it back here. We are  
10 going to start at 11:05, so that gives us ten minutes, and  
11 we will start again at that time, so please gauge yourselves  
12 accordingly.

13 Thank you very much and, again, thanks to Dean  
14 Fordham.