THE STATUS OF "HOME RULE" IN GEORGIA

The archaic system of special bills to provide for the local government of cities and counties, which had its inception in this country when the colonies asserted their independence,[1] has long been under fire as not only cumbersome but also contrary to tradition and the intention of those who formed our state governments.[2] The opponents of this system offered in its stead local government of municipalities by a system commonly referred to as "Home Rule." Although this system has not had success commensurate with the glossy pictures painted by its more avid proponents, it has, where accepted, attained the aims of its more practical supporters by placing the reins of government closer to those directly concerned. The form of the municipal government has been shaped to fit the peculiar needs of the community, thereby simplifying the governmental machinery and allowing prompt action in dealing with local problems. In addition to these advantages, the system has relieved the state legislature of a tremendous load of special legislation and has removed the temptation to interfere in local affairs on the basis of partisan politics or at the behest of local pressure groups.[3]

Although the trend toward Home Rule reached its apex in the late twenties, it is still proceeding. The convention which drafted the 1945 Constitution of Georgia sensed the need to relieve the legislature of a portion of its overload, and included in the Constitution a mandate to the legislature to provide uniform systems of county and municipal governments.[4] Acting expressly in obedience to this mandate, the 1947 session of the General Assembly enacted the "Municipal Home Rule Law of 1947."[5] Feeling that this act failed to attain the desired result and feeling that it also failed to answer the Constitutional mandate, the lower house of the

1. DE TOCQUEVILLE, DEMOCRACY IN AMERICA, 445,446 (Rev. ed. 1899).
2. I MCQUILLIN, MUNICIPAL CORPORATIONS, 265 (2d ed. 1940).
3. *Id.* at 277, 278.
4. GA. CONST. Art. XV, § 1, GA. CODE ANN. § 2-8301 (1946 Rev.).
5. Ga. Laws 1947, No. 290, p. 1118, GA. CODE ANN. §§ 69-1001 *et seq.* (Supp. 1947).

General Assembly passed another Home Rule bill in 1949 designed to cure these defects.[6] This bill was rejected by the Senate in the 1950 extended session of the legislature.

I.

The "Municipal Home Rule Law of 1947"[7] contains a list of 116 counties to which it shall apply,[8] one of which is elsewhere expressly removed from its application.[9] Of the remaining 43 counties two are expressly exempt[10] and the others are covered by a provision rendering the Act ". . . ipso facto of no further force and effect just as if it had been repealed in its entirety . . ." if it is in anyway extended to cover counties previously excluded.[11] At the most, this effort of the General Assembly can hardly be called more than a failure, and it is generally conceded to be an unconstitutional failure at that. This idea exists because the Act contains within it special legislation[12] and because it brazenly violated both the letter and the spirit of the Constitution by failing to provide a uniform system of municipal government. The bill killed by the Senate during the 1950 extended session[13] of the Legislature seems to be the future Home Rule Law of Georgia, and for that reason will be compared with the present law.

Both the 1947 Act and the proposed bill provide that original charters may be granted only by the General Assembly,[14] but neither requires the charter drafted by the municipality under the Act to be approved by the Assembly.[15] The general tenor of the two is that although the

6. H. B. 25, 1949 Session, General Assembly of Georgia.
7. Ga. Laws 1947, No. 290, p. 1118, GA. CODE ANN. §§ 69-1001 *et seq.* (Supp. 1947).
8. Ga. Laws 1947, No. 290, § 10, p. 1129.
9. Ga. Laws 1947, No. 290, § 10, p. 1130.
10. Ga. Laws 1947, No. 290, § 10, p. 1129.
11. Ga. Laws 1947, No. 290, § 11, p. 1120.
12. Ga. Laws 1947, No. 290, § 3 (2), p. 1123; Ga. Laws 1947, No. 290, § 10, p. 1129; Ga. Laws 1947, No. 290, § 10, p. 1130.
13. Ga. Laws 1947, No. 290, p. 1118, GA. CODE ANN. §§ 69-1001 *et. seq.* (Supp. 1947).
14. Ga. Laws 1947, No. 290, § 2, p. 1119; H. B. 25, § 2.
15. Ga. Laws 1947, No. 290, § 3 (e), pp. 1120, 1121; H. B. 25 § 3 (e).

General Assembly is the only power that can incorporate a municipality, once incorporation takes place the charter may be shed and a new one drafted under Home Rule.[16] This leaves the General Assembly with the power to veto incorporation but without the power to set conditions for incorporation. The General Assembly may have intended that the charter under Home Rule be submitted to it for approval, as has been provided by other statutes[17] and as was done by Marietta, Georgia,[18] but such an intention is contrary to the express words of the Act, and any benefit achieved thereby could be defeated by the amending process.[19]

The 1947 Act and the proposed bill both provide alternate methods for calling an election to determine the question of whether a commission shall be appointed to draft a charter.[20] The question may be submitted either by ordinance of the governing body of the municipality or a petition filed with the city clerk or similar official. If the latter method is used, the 1947 Act requires that the petition to be operative must be signed by at least 25% of the voters qualified to participate in the last general election. The proposed bill reduces the required number of signatures from 25% to 20% and changes the term "last general election" to "last general city election" to remove any possible confusion. Under either statute, the election of commissioners to draft the charter takes place at the same time as the election to determine whether a commission shall be selected.[21] This, along with other provisions,[22] is obviously designed both to expedite the procedure and to minimize the expense. If the vote is favorable, the seven candidates for

16. Ga. Laws 1947, No. 290, § 3, p. 1119; H. B. 25 § 3.
17. *See* City of Sapulpa v. Land, 101 Okla. 22, 223 Pac. 640, 35 A.L.R. 872 (1924).
18. Ga. Laws 1949, No. 58, p. 238.
19. *See* Denver v. New York Trust Co., 229 U.S. 123, 33 S. Ct. 657, 57 L. Ed. 1101 (1913).
20. Ga. Laws 1947, No. 290, §§ 3(a), 3(b), pp. 1119, 1120; H. B. 25, §§ 3 (a), 3 (b).
21. Ga. Laws 1947, No. 290, §§ 3 (c), 3 (d), p. 1120; H.B. 25, §§ 3 (c), 3 (d).
22. Ga. Laws 1947, No. 290, §§ 3 (e), 3 (b), 3 (k), 3a, 5, pp. 1120, 1121, 1123, 1124, 1126; H.B. 25, §§ 3 (e), 3(h), 5.

commissioner receiving the highest number of votes proceed to draft a charter to be submitted to the governing authority of the municipality within ninety days.[23] All necessary expenses of the commission are paid by the municipality, but the commissioners receive no compensation for their services.[24] The charter is submitted to the electorate of the municipality at a special election between sixty and ninety days from the time of the commission's report, unless a general election comes within that time, in which case the charter is voted on at the general election.[25] Where alternate sections are offered, the one receiving the highest vote is adopted.[26] If the charter is approved, it goes into effect at the time specified therein and supersedes the existing charter and all amendments to it. An alternate method of framing and adopting a charter is provided by the 1947 Act for ". . . cities located in counties of between 81,000 and 82,000 over 200,000 population. . . ."[27] Since these are the exact words of the Act, this method may be questioned both as being too vague and as being special legislation.

If the municipality desires to come under Home Rule and to also retain its old charter,[28] or if it desires to amend a charter granted under Home Rule,[29] the question of coming under Home Rule and keeping its old charter or the proposed amendment may be submitted in the same manner as the question of selection of a charter commission.

The extension of corporate limits may be accomplished by affirmative vote of the electorate of the municipality and of the proposed extension, counted separately.[30] This election is called by the ordinary at the behest of the municipal governing body, by ordinance, or by petition of 25% of the registered voters within the municipality and the pro-

23. Ga. Laws, 1947, No. 290, § 3 (d), p. 1120; H.B. 25, § 3 (d).
24. *Ibid.*
25. Ga. Laws 1947, No. 290, § 3 (e), pp. 1120, 1121; H.B. 25, § 3 (e).
26. Ga. Laws 1947, No. 290, § 3 (d), p. 1120; H.B. 25, § 3 (d).
27. Ga. Laws 1947, No. 290, § 3a, p. 1123.
28. Ga. Laws 1947, No. 290, § 5, p. 1126; H.B. 25, § 5.
29. Ga. Laws 1947, No. 290, § 3 (h), p. 1121; H.B. 25, § 3 (h).
30. Ga. Laws 1947, No. 290, § 3 (k), p. 1121; H.B. 25, § 3 (j).

posed one of expansion, under the 1947 Act;[31] the proposed bill changes the alternate method to petition by 20% of the qualified voters within the area of proposed expansion.[32] This change will doubtless facilitate corporate expansion. The 1947 Act expressly forbids a municipality having a population in excess of 100,000 and lying in two or more counties from employing this method to expand its corporate limits in the county or counties in which less than a majority of its citizens reside.[33] The proposed statute removes the taint of special legislation by barring *all* municipalities lying in two or more counties from using this expansion procedure.[34]

Each statute grants the municipality the following specific powers in addition to its general power of local legislation:[35]

1. To establish municipal offices and define their powers, duties and qualifications.

2. To establish and operate waterworks, incinerators, sewerage systems and disposal plants, and electric generating plants and distribution systems: Provided the municipality may not set its own rates.

3. To create police courts and maintain police and fire departments.

4. To levy taxes within the limits fixed by its charter.

5. To issue, refund, and liquidate financial obligations, including school, street, water, electric generating plant and distribution systems, and sewer bonds, and issue revenue anticipation certificates for the construction of revenue producing facilities. (The proposed statute specifically subjects the issuance of revenue anticipation certificates to the general law.)

6. To establish hospitals and clinics for both charitable and paying patients.

7. To own and operate public parks, swimming pools, golf courses, recreational grounds, air fields and airports.

8. To contract with other political subdivisions for joint services or exchange of services.

---

31. Ga. Laws 1947, No. 290, § 3 (k), p. 1121.
32. H.B. 25, § 3 (j).
33. Ga. Laws 1947, No. 290, § 3 (k), pp. 1121, 1122.
34. H.B. 25, § 3 (j).
35. Ga. Laws 1947, No. 290, § 4, pp. 1124-1126; H.B. 25, § 4.

9. To establish merit systems, civil service, and retirement systems for municipal and school employees.

10. To completely regulate municipal elections.

11. To grant franchises and contract with public utilities. (The 1947 Act expressly prohibits the municipality from securing new rights by virtue of this provision, while the proposed statute merely subjects the exercise of this right to provisions of the municipal charter and the Constitution and general laws of the state.)

The 1947 Act grants 1, 4, 5, 6, and a portion of 2 of the above listed powers to all municipalities whether they elect to come under Home Rule or not.[36] The statute is not clear as to whether this provision is limited to municipalities eligible to come under Home Rule, but apparently such a limitation was intended.

A provision for recall of officers or members of the governing body of the municipality is included in each statute.[37] Such recall is held on petition of 25% of the qualified voters under the 1947 Act and 20% under the proposed bill. Both limit recall elections to one per officer per year. In the event of a successful recall election, the office is immediately declared vacant and is then filled in the usual manner.[38]

II.

Although almost all Home Rule statutes differ in some respects, they invariably contain three essentially identical, basic provisions. These provisions grant to the municipality the power to draw up its own charter,[39] the right to amend the charter locally without legislative interference[40] and the right to legislate locally concerning matters of local concern.[41] The exercise of these grants may be subject to regulation, such as a limitation on the number of elections each year or a requirement that the charter be submitted to the

36. Ga. Laws 1947, No. 290, § 6, p. 1127.
37. Ga. Laws 1947, No. 290, § 7, pp. 1127-1129; H.B. 25, § 6.
38. Ga. Laws 1947, No. 290, § 7 (b), pp. 1128, 1129; H.B. 25, § 6 (b).
39. City of Sapulpa v. Land, 101 Okla. 22, 223 Pac. 640, 35 A.L.R. 872 (1924).
40. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 Pac. 55 (1913).
41. Davidson v. Hine, 151 Mich. 294, 115 N.W. 246 (1908).

legislature for approval.[42] And such regulation of these grants must be by a general and not a special law, since the constitution and the general laws are the only limitations on Home Rule action.[43] In addition to this limitation on the legislature, adoption of Home Rule renders nugatory all special acts contrary to the charter adopted[44] and precludes the legislature from later passing special acts concerning matters covered by the act[45] or included in the general category known as local matters.[46] Thus the legislature may not grant a new charter in conflict with the one adopted under Home Rule.[47] On the other hand, in the absence of an express constitutional provision, the legislature may repeal the entire Home Rule statute.[48] The effect of such a repeal on a Home Rule charter has never been determined, but apparently the charter would then stand subject to legislative change as if originally granted by the legislature. Under a constitutional provision such as Georgia's, the repealing act would probably be held to be invalid unless it also provided a plan which answered the constitutional mandate.

The most challenging problem under Home Rule statutes is determination of what is included in the general class referred to as local affairs. This problem is usually somewhat lessened by a specific enumeration in the statute of the major powers granted to the municipality, but since the enumerated powers are broad and since neither the municipality nor the legislature feels bound by the enumeration, conflict is inevitable. Where both legislate on the same matter and their actions can be reconciled, the courts allow both to stand unless one clearly invades the domain of the other.[49]

42. City of Sapulpa v. Land, 101 Okla, 22, 223 Pac. 640, 35 A.L.R. 872 (1924).
43. City of Denton v. Denton Home Ice Co., 119 Tex. 193, 27 S.W.2d 119, 68 A.L.R. 866 (1930); Hudson Motor Car Co. v. Detroit, 228 Mich. 69, 275 N.W. 770, 113 A.L.R. 1472 (1937).
44. Burnes v. Lynn, 49 Okla. 526, 153 Pac. 826 (1915).
45. City of Portland v. Welch, 154 Ore. 286, 59 P.2d 228 (1936).
46. Hudson Motor Car Co. v. Detroit, 228 Mich. 69, 275 N.W. 770, 113 A.L.R. 1472 (1937).
47. Ex Parte Lewis, 45 Tex. Cr. R. 1, 73 S.W. 811 (1903).
48. *See* Van Gilder v. City of Madison, 222 Wis. 58, 267 N.W. 25 (1936).
49. City of Beaumont v. Fall, 116 Tex. 314, 291 S.W. 202 (1927).

Thus the legislature has been upheld in regulating the salaries paid by local police departments[50] and in providing pension plans for local police,[51] because these regulations of local affairs directly affected law enforcement which is a matter of statewide concern. Similarly, an attempt to set up a local fire department was held to be an invasion of the domain of the local government.[52] Although the municipality has the power to establish its own parks, the legislature has been allowed to do the same in providing for the general welfare.[53] Where the proposed service is clearly of a purely local nature, the municipality is still prevented from engaging in a profit-making enterprise[54] or a competitive field[55] without express authority. Consequently, the power to establish parks cannot be extended by the municipality so as to enter the commercial field.[56]

The municipality has the power to determine its own form of government,[57] including the number and types of officials,[58] but is usually denied the power to establish election procedure[59] or to provide methods for contesting elections.[60] In one case where the power to establish election procedure was granted, the extension of suffrage to women, for city elections, was allowed.[61] The right to extend bound-

50. Van Gilder v. City of Madison, 222 Wis. 58, 267 N.W. 25 (1936).
51. Policemen's Pension Fund v. Schupp, 223 Ky. 269, 3 S.W.2d 606 (1928).
52. Davidson v. Hine, 151 Mich. 294, 115 N.W. 246 (1908).
53. Terre Haute v. Kolsum, 130 Ind. 434, 29 N.E. 595 (1891).
54. City of Denton v. Home Ice Co., 119 Tex. 193, 27 S.W.2d 119 (1930).
55. Cleveland v. Ruple, 130 Ohio St. 465, 200 N.E. 507 (1936).
56. Beach Realty Co. v. City of Wildwood, 105 N.J. Law 317, 144 Atl. 720 (1929).
57. Booten v. Pinson, 77 W.Va. 412, 89 S.E. 985 (1915).
58. *Ibid.*
59. Automatic Registering Machine Co. v. Green, 121 Ohio St. 301, 168 N.E. 131 (1929); Fitzgerald v. Cleveland, 88 Ohio St. 338, 103 N.E. 512 (1930).
60. Fawcett v. Superior Court, 14 Wash. 604, 45 Pac. 23 (1896).
61. State v. French, 96 Ohio St. 172, 117 N.E. 173 (1917).

aries[62] and the right to levy taxes,[63] other than those based on services rendered,[64] do not exist except in accord with the delegation of authority. Eminent domain is uniformly held to be a matter of local concern.[65]

III.

Both of the statutes considered contain provisions which place them on a par with any similar statute in the country. Were the 1947 Act of uniform general application, the local government problem in Georgia would be greatly alleviated, but since it lacks this uniform application the problem remains. Popular demand for a solution is still on the increase and can be satisfied only by a statute which removes these fatal defects. The logical solution seems to be enactment of a bill similar to the one recently rejected, since it is of well-considered substance and meets the legal requirements of uniform general application.

J. ALVIN GILMORE
SCOTT WALTERS, JR.

62. State v. Snell, 4 Wash. 773, 31 Pac. 25 (1892); Kahn v. Sutro, 114 Cal. 316, 46 Pac. 87 (1896); *See also* Wiget v. City of St. Louis, 337 Mo. 799, 85 S.W.2d 1038 (1935).
63. Kansas City, Mo. v. V. J. J. Case Threshing Machine Co., 337 Mo. 913, 87 S.W.2d 195 (1935).
64. St. Louis v. Western Union Telegraph Co., 149 U.S. 465, 13 S. Ct. 990, 37 L. Ed. 810 (1892).
65. McMinnville v. Howenstein, 56 Ore. 541, 109 Pac. 81 (1910).