

CITIZENS LEAGUE REPORT

No. 36

**Proposed Revision of Constitutional  
Provisions on Local Government**

**February 23, 1955**

C I T I Z E N S   L E A G U E   O F   G R E A T E R   M I N N E A P O L I S

TO: Board of Directors

FROM: Forms and Structure of Government Committee, John Finn, Chairman.

SUBJECT: Proposed revision of constitutional provisions on local government.

DATE: February 23, 1955 .

Since December 1954 the Forms and Structure of Government Committee has been reviewing the present state constitutional provisions on local government, and recent proposals for revising them. The latter consist of the recommendations of the Constitutional Commission of 1948, a bill introduced in the 1953 legislature (H.F. 671) which failed to pass, and a similar bill introduced in the current legislative session (H.F. 571). The two bills were recommended by the League of Minnesota Municipalities (LMM) and, with a few exceptions, are basically the same as the amendment proposed by the Constitutional Commission.

H.F. 571 is attached as appendix A.

If passed by the 1955 legislature, the new local government provisions would be submitted for voter approval at the general election in November 1956.

RECOMMENDATION:

The Forms and Structure of Government Committee recommends to the Board of Directors that the Citizens League go on record in support of H.F. 571 in the current legislative session, except that the League urge a different Section 9 regarding local taxation.

Section 9 of H.F. 571 reads:

"Counties and townships shall have such powers of local taxation as may be prescribed by law."

We suggest Section 9 be as follows:

"Local governments shall have such powers of local taxation as may be prescribed by statute."

Our reasons for urging this substitute section are given on page 4 of the explanation below.

DESCRIPTION OF THE BILL (H.F. 571) CALLING FOR REVISION OF LOCAL GOVERNMENT SECTION OF CONSTITUTION

The following paragraphs describe the need for revision of the local government sections of the constitution, and the manner in which H.F. 571 accomplishes it. This description is adopted from a memorandum prepared

in 1953 by Orville C. Peterson, attorney for the LMM, and a recent oral presentation he made to our committee.

### General Nature of the Constitutional Commission's Proposal

The proposal would replace all of the existing sections of the constitution dealing with local government. These cover mainly special legislation (on local government), home rule for cities and city-county consolidation. In general, it proposes to tighten and make more realistic the restrictions on special legislation, to broaden and make more flexible the provisions for home rule charters, and to provide somewhat more specifically than the present constitution for the organization of city-counties and for city-county consolidation.

### SPECIAL LEGISLATION

#### History of present provision

Since 1892 the constitution has prohibited special legislation dealing with local governments. But the legislature may adopt laws which are general in form but special in application, if the criteria used for classifying local units to which each law applies are germane to the purpose of the law. As a result the legislature has classified local units by assessed valuation, population and area, or other criteria. Actually many laws adopted each session violate the special legislation prohibition of the constitution and would be declared invalid if they were tested in court.

The practice of adopting laws which are general in form but special in application has grown in recent years so that if all of these laws were put together, a small volume would now be required for the session's output. There were at least 201 such laws in the 1951 session.

#### Some of the evils of the present system of special legislation.

1. Reliance upon the legislature for special acts weakens local government and tends toward the eventual destruction of home rule.
2. The passage of special laws consumes much of the time of the legislature, time which could more profitably be spent on general legislation policy.
3. There is an increasing tendency to put laws in special form just to avoid the difficulty of persuading the legislature to adopt a general policy; yet many times what is desirable for a single unit would be good practice as a general law. Conversely, what would not be adopted as a general policy because unsound is adopted when it applies to a single political subdivision.
4. In most cases general legislative deliberation on special bills is almost lacking. A bill passes if it is approved by the legislators from the district affected and the governing body of the local government unit concerned.

### Special legislation under the proposed constitutional amendment

The proposed amendment divides special legislation into two categories:

One category of special legislation would include any law applying to a class of local governments of the same type, except that the maximum number of such classes would be: counties, six; cities, four; villages, three; towns, three; school districts, six. Also, any one class would have at least three local governments in it.

For example, cities would be divisible into no more than four groups, but each group would need to contain at least three cities.

The other category, of special legislation would include any law applying to any single unit of local government. Any such unit would have to be named specifically, and the law would not become effective until approved by a majority of the voters of the unit voting on the question of approval.

The proposed amendment thus would end the subterfuges of present practice, would permit the legislature to pass a special law frankly and openly applying to a single governmental unit, but would subject such a law to the scrutiny of local voters, thus encouraging the use of the home rule charter method where that is available.

### HOME RULE CHARTERS

#### Present Provision

The present constitution, adopted in 1896, permits any city or village to adopt a home rule charter for its government as a city consistent with state law. About 82 cities now operate under home rule charters. There is no similar right for counties. The present home rule amendment is very detailed.

#### Weaknesses of present provision

1. Anomalous distinctions between procedure on original charter submission and on amendments. An original charter may be submitted without any publication and passes if approved by 57% of those voting at the election; an amendment needs a 60% vote and must be published for four consecutive weeks in a local newspaper.
2. The severity of vote requirements. All other states permit adoption by a bare majority of those voting at the election. Present rules have unquestionably encouraged use of special legislation, especially in the larger cities where the 60% vote is very hard to secure. Furthermore, the constitution requires that the vote be calculated on the basis of those who vote at the election, not just those who vote on the issue.
3. In every other home rule state charter commissions are elected by the voters. The legislature would have the right to change the method of changing the selection of charter commissions.

4. Submission of charter within six months of creation of charter commission. This is universally ignored in practice.

5. Lack of power to abandon or adopt second charter. A city can never do anything to the charter thereafter except to amend it.

#### Proposed provisions

Recognizing that under Minnesota doctrine, the legislature is supreme and may override the provisions of home rule charters, the proposed amendment merely guarantees the basic right to frame home rule charters in accordance with law and leaves details for subsequent legislation, even on such matters as the question of majorities required for adoption. The legislature may thus take account of experience and change the law to meet changing needs.

The bill would also permit abandonment of a charter and the return to organization under legislative enabling act. Thus the constitutional amendment would eliminate all of the above-mentioned claimed defects of the present system or would permit their elimination by legislative act.

Furthermore, it would authorize the legislature to provide for county home rule, the need for which is made apparent by the profusion of present special laws for counties.

### CITY-COUNTY CONSOLIDATION

#### Existing provision

The only present provision is one which authorizes the legislature to organize any city into a separate county if it has 20,000 population. This provision has never been implemented by legislation.

#### Proposed provision

Pursuant to a general enabling act, any city of more than 50,000 population would be permitted to be organized as a city-county under a home rule charter. Approval would require a majority of the voters in the city and a majority of the voters in the remainder of the county.

In addition, the legislature could also provide for partial or complete consolidation of a county and the principal city of the county under home rule charter. The charter would be prepared by the county charter commission.

### LOCAL TAXATION

The Forms and Structure Committee considered at length Section 9 which deals with the question of local taxation. That Section as contained in H.F. 571 now before the Legislature reads as follows:

"Section 9. Local Taxation. Counties and townships shall have such powers of local taxation as may be prescribed by law".

The League of Minnesota Municipalities contends that this section continues existing law. The present Constitution of the State of Minnesota contains no reference to local taxation except in Section 5 of Article XI, which provides "Any county and township organization shall have such powers of local taxation as may be prescribed by law". The language of Section 9 of the proposed bill and that in Section 5 of Article XI of the present Constitution are sufficiently similar to support the conclusion advocated by the LMM.

Several members of the committee disagreed with this conclusion on the ground that the bill proposes a new Article XI to the state constitution which would contain all the local government provisions, while in the present constitution Article XI concerns itself only with counties and townships and other local governments are provided for elsewhere. Therefore, the courts may not interpret Section 9 as presently drafted as they have interpreted Section 5 of Article XI.

It was further argued by committee members that existing law with respect to the power of taxation of local governments is far from clear, and that the proposed Section 9, if it does continue existing law, also continues existing uncertainties and confusion. Court decisions on the question of the power of local governments to tax seem to have but one clear pattern, namely local governments other than counties and townships may impose such taxes as have a purely local effect. Since the economic incidence of every tax is debatable, it is impossible to determine in all cases what the court would hold as to the power of a local government to impose a particular tax.

Two interpretations of the LMM's Section 9 are permissible: The first is that local governments other than counties and townships have limited powers to tax as under existing law. The second is that they have complete power to tax. The committee thinks that neither interpretation is desirable. The existing uncertainties resulting from the first interpretation should not continue, and secondly, the complete power to tax subject only to legislative veto should not be granted to local governments, for the vesting of such power in them would result in a jungle of local taxation in the State of Minnesota, and would make it difficult for the legislature to enact a well considered, coherent and consistent system of state and local taxes. Consequently, the committee decided that it would prefer to vest responsibility in the legislature for determining the system of state and local taxation, and to give the legislature the power to delegate to the local government the right to tax. The committee considered Section 9 as drafted by the Constitutional Commission in 1948, which reads as follows:

"Section 9. Local Taxation. Local governments shall have such powers of local taxation as may be prescribed by law."

During the committee's discussion, the question was raised as to whether the phrase "prescribed by law" included home rule charters so as to, in effect, give local home rule governments greater powers to tax than non-home rule local governments. To avoid any uncertainty, it was suggested that the phrase be amended to read "prescribed by statute." This amended provision would make it clear that the legislature had the right to determine what power to tax all local governments in Minnesota

should have.

Finally, it should be pointed out that there is a saving clause in the bill which would continue in effect existing laws which were valid when enacted until they are amended or repealed in accordance with the proposed Article.

To summarize: The committee's draft of Section 9 would be as follows:

"Local governments shall have such powers of local taxation as may be prescribed by statute."

We believe this eliminates uncertainties under existing law that would continue in effect if the LMM's proposal is adopted, and eliminates any implication that local governments other than counties and townships would have the complete power to tax. The committee's proposal places in the legislature the full responsibility and authority to determine the form of local taxation in the State of Minnesota. This will lead to more consistency, uniformity and a better system of taxation than would probably be the case under the LMM's proposal.

#### SOME GENERAL CONSIDERATIONS

The present constitutional provisions on local government need a complete overhauling. The minor changes that might be made in the existing home rule and special legislation provisions by more specific amendment are completely inadequate to do the job. The details in the present home rule charter provisions are so extensive that nothing short of a major revision will suffice. Furthermore, the whole amendment must necessarily be considered as a single package if the system is to be properly corrected; special legislation provisions cannot be made more stringent without, at the same time providing for a more workable home rule charter machinery; conversely, the home rule charter machinery will not be adequately used without placing additional restrictions upon special legislation.

APPENDIX A

Introduced by Popvich, Anderson, H. J.,  
Ernst, Rutter, Eck  
February 2, 1955  
Ref. to Com on Municipal Affairs

H. F. No. 571  
Companion S. F. \_\_\_\_\_  
Ref. to S. Com. \_\_\_\_\_

A BILL

FOR AN ACT PROPOSING AN AMENDMENT TO THE CONSTITUTION  
OF MINNESOTA RELATING TO LOCAL GOVERNMENT BY ADDING A  
NEW ARTICLE XI, REPEALING ARTICLE IV, SECTION 36 AND  
THE PRESENT ARTICLE XI, AND REPEALING INCONSISTENT  
PROVISIONS OF ARTICLE IV, SECTION 33.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. An amendment of the Constitution of the State of Minnesota is proposed to the people of the state for their approval or rejection, which amendment, if adopted, shall be known as Article XI and shall replace the present Article XI, Article IV, Section 36, and inconsistent provisions of Article IV, Section 33. The proposed amendment reads:

ARTICLE XI

Section 1. A local government is a county, city, village, town, school district, or other political subdivision for which provision has been made by law for self government and for the holding of elections.

A law that applies to fewer than all members of any class of any type of local government, or a law providing for a variation in any right, power, privilege, immunity, duty, obligation, or form of organization between members of any class of any type of local government, is a special law; but a law otherwise general is not a special law because it provides for such a variation between members of a class having a home rule charter and those not having such a charter.

A charter adopted under the provisions of Section 5, 7, or 8 is a home rule charter.

Sec. 2. The Legislature may provide by general law for the creation, organization, administration, consolidation, and division of local governments and their functions, for the change of boundaries thereof, and for the transfer of county seats. No county boundary shall be changed or county seat transferred until approved by a majority of the voters of each county affected voting thereon.

A general law hereafter enacted shall prevail over the provisions of a home rule charter only if such law so states.

Sec. 3. For the purposes of legislation the Legislature may classify any type of local government, but the maximum number of such classes shall be: counties, six; cities, four; villages, three; towns, three; school districts, six. At the time of the passage of any such law there shall be at least three local governments of any type in a class. The Legislature may provide by general law for the transition of local governments from one class to another.

Sect 4. The Legislature may enact special laws for any local government and may amend or extend any such law. Any special law may name the local government to which it applies. Before any such law or any amendment or extension thereof becomes effective it shall be approved by a majority of voters of the local



government voting thereon at a general or special election. Any special law may be repealed without popular approval.

Sec. 5. Any city or village may adopt a home rule charter for its government as a city and any county may adopt a home rule charter for its government as a county in accordance with this Constitution and the laws of the state. Any such charter shall provide, among other things, for the form of government, for the election of the principal governing body and for the performance of all duties imposed upon the local government by this Constitution and the laws of the state.

Sec. 6. The legislature shall provide by law for charter commissions. Such law may require that commission members shall be freeholders and may permit any member to hold any other elective or appointive office other than judicial. Such law shall specify the manner of presenting a home rule charter or an amendment thereof to the governing body and of submitting it to the voters, and shall fix the majority vote required for adoption. Such law shall provide that amendments may be submitted by a charter commission on its own initiative, and shall be submitted upon petition of five per cent of the voters of the city or county as defined by law. The power to submit a home rule charter or amendment is a continuing one and is not exhausted by the original submission. A county or city may repeal its home rule charter and adopt a statutory form of local government upon the same majority vote as fixed by law for the adoption of home rule charter.

Sec. 7. The Legislature may provide by law for the partial or complete consolidation of a county and the principal city of the county under a home rule charter. The county charter commission shall present such charter to the county governing board for submission to the voters, and it shall become effective when approved by a majority of the voters in the city voting thereon and a majority of the voters in the remainder of the county voting thereon; but no provision of such charter dissolving, or restricting the powers of any other local government shall be effective unless the charter is approved by a majority of the voters of such local government voting thereon.

Sec. 8. The Legislature may provide by law for the organization of any city or more than 50,000 inhabitants as a city-county under a home rule charter. Such law shall provide for the division of county property, debts and records between the city-county and the remainder of the county, and shall provide for the government of the remainder of the county either as a separate county or as a part of an adjacent county. A city-county charter shall be presented and submitted as a city home rule charter is required to be presented and submitted. Such a charter shall become effective when approved by a majority of the voters in the city voting thereon and a majority of the voters in the remainder of the county voting thereon. A city-county shall have the powers and duties of a city and of a county.

Sec. 9. Counties and townships shall have such powers of local taxation as may be prescribed by law.

Sec. 10. Article IV, Section 38 and the previously existing Article XI of the Constitution of Minnesota are repealed. Those provision of Article IV, Section 33 dealing with special laws on local government are superseded by this article. Existing laws, valid when enacted, shall continue in effect until amended or repealed in accordance with this article.

Sec. 2. The proposed amendment shall be submitted to the voters of the state for their approval or rejection. The ballots used at the election on the proposed amendment shall have printed thereon: "Shall the Constitution of Minnesota be amended by including a consolidated article on local government, restricting the passage of special laws, authorizing cities, villages, and counties to adopt and amend home rule charters, and permitting the organization of city-counties and the consolidation of cities and counties as authorized by law?"

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