CITIZENS LEAGUE REPORT

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Minnesota Municipal Commission

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Citizens League
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Minneapolis 2, Minnesota

(152)

APPROVED
BOARD OF DIRECTORS
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TO: Board of Directors

FROM: Government Organization Committee

SUBJECT: Report of Findings and Recommendations on the Proper Future Role and Authority of the Minnesota Municipal Commission

PREPARED BY: The Minnesota Municipal Commission Subcommittee, Greer Lockhart, Chairman

SCOPE OF REPORT

In recognition of an increasing controversy concerning the future of the Minnesota Municipal Commission, the Citizens League's Board of Directors in the fall of 1962 charged the League's Government Organization Committee with the responsibility of studying the Minnesota Municipal Commission and reporting its findings and conclusions on the proper future role and authority of the Minnesota Municipal Commission with respect to the Commission's jurisdiction over incorporations, annexations or mergers of communities within the Twin Cities metropolitan area. The study was conducted and the report prepared by a special subcommittee under the chairmanship of Greer Lockhart.

In the course of our study we have reviewed the Minnesota Municipal Commission Act; the report of the 1957 Commission on Municipal Annexation and Consolidation, as submitted to the 1959 Minnesota Legislature; the report of the 1959 Commission on Municipal Laws, as submitted to the 1961 Minnesota Legislature; opinions of the Minnesota Municipal Commission; the reports of the Advisory Commission on Intergovernmental Relations, and other literature in this field. Our subcommittee has met with Roger A. Peterson, Assistant Executive Secretary to the 1959 interim commission; Joseph Robbie, Executive Secretary and Counsel to the two legislative interim commissions and Chairman of the Minnesota Municipal Commission; F. Robert Edman, former Chairman of the Twin Cities Metropolitan Planning Commission and currently Executive Secretary of the Minnesota Municipal Commission; and Vance Grannis, Jr., member of a law firm which has represented several townships in hearings before the Minnesota Municipal Commission.

This report consists of our review and evaluation of the Municipal Commission, its powers and its effectiveness, and of various proposals for changing the authority and the operation of the Municipal Commission. In this report we have not attempted to evaluate the details of the Municipal Commission Law. We also considered it to be beyond the scope of our study to attempt to evaluate proposals which have been made to increase the authority of the Minnesota Municipal Commission in counties outside the metropolitan area.

The subcommittee which was appointed by Mrs. Stanley G. Peterson, Chairman of the Government Organization Committee, includes the following members: Greer Lockhart, Chairman, Ray Boezi, Earl Colborn, Jr., Fred Goff, James Hawkes, Zane Mann, Roger Peterson, Stanley Rischard and Clement Springer.

The subcommittee report was submitted to the League's Government Organization Committee for approval prior to its submission to the Board of Directors.

MAJOR FINDINGS AND RECOMMENDATIONS

1. Establishment of the Minnesota Municipal Commission Has Greatly Improved Annexation and Incorporation Prodedures.

Prior to the establishment of the Minnesota Municipal Commission in 1959, Minnesota laws on annexation, incorporation, consolidation and other municipal boundary changes were inadequate and ineffectual. Some villages were incorporated for the single purpose of providing a liquor license to the sponsors of the incorporation, others to pre-empt the tax base created by the establishment of new industry, and others to avoid annexation by an adjacent municipality. This procedure often resulted in village boundaries which were not related to governmental services, gerrymandered municipal boundaries which created islands of unincorporated territory surrounded by an incorporated village, municipalities or townships consisting of a large number of separate and detached parts and small villages completely surrounded by larger municipalities.

While incorporation was a relatively simple process, annexation was extremely complex. In spite of the 80 or so different statutory provisions relating to annexation, in some instances it was virtually impossible to accomplish an annexation even where everyone involved was in favor of it. As a net result, there are now more than 130 individual cities and villages within the 7-county metropolitan area and more than one-fourth of them have less than 500 inhabitants.

This situation was greatly improved by the passage of the Minnesota Municipal Commission Act in 195. Since that time, all incorporations and most annexations and other boundary changes within the metropolitan area have been reviewed by an impartial administrative agency on the basis of the guide lines stated in the statute. This has introduced an element of order into the process whereby communities are born and grow.

2. Municipal Commission Should Continue Without Any Loss of Authority.

We consider the Minnesota Municipal Commission Act to be one of the most forward-looking pieces of legislation ever adopted in Minnesota. It has been widely praised by study commissions and government experts throughout the nation and generally is considered to be the best legislation of its kind in any of the fifty states. We believe that the Minnesota Municipal Commission is needed to guide the orderly development of the metropolitan area.

We strongly recommend the continuation of the Minnesota Municipal Commission without any diminution in its present powers, and we urge the 1963 Minnesota Legislature to reject the attempts which are being made to repeal the Minnesota Municipal Commission Act or curtail the powers of the Commission.

3. The Minnesota Municipal Commission Act states that the Commission is created to "hear petitions for the incorporation of property into villages, the detachment of property from municipalities and the annexation of property to municipalities." While we believe that the Municipal Commission as now organized is capable of discharging this quasi-judicial function, we do recommend the following changes in the Minnesota Municipal Commission Act as improvements:

a. All Annexation Petitions Should be Submitted to the Commission.

The present Municipal Commission Act permits a municipality to annex any contiguous area which is less than 200 acres in size

without the consent of the Municipal Commission, if the owner or a majority of the owners of the land to be annexed have petitioned for such an annexation. This is the provision which the City of Bloomington used in its attempt to annex the Black Dog Power Plant. Other municipalities have used this provision to nibble away parts of adjoining townships. This 200 acre provision has led to a considerable amount of gerrymandering, since this is often necessary in order to assure a favorable majority in the area to be annexed. The act also permits a municipality to annex without the consent of the Municipal Commission if the land being annexed is owned by the annexing municipality or if it is completely surrounded by land within the annexing municipality.

We recommend that all three of these provisions be changed so as to require the approval of the Municipal Commission for every annexation within the metropolitan area.

b. Secretary Should Not Be a Member of the Commission.

At the present time, the Municipal Commission consists of a chairman, a vice chairman and a secretary. The secretary is a full-time employee of the state, who is charged with "conducting the administrative affairs of the Commission." This situation often requires the secretary to "wear many hats," since he not only sits as a voting member of the Commission, but also is responsible for gathering facts pertaining to the issue before the Commission, advising local officials about Municipal Commission procedures and making arrangements for the hearings. We believe that this is an unhealthy situation, since it creates some doubt about the role of the secretary in the minds of those appearing before the Commission and could create some doubt about the impartiality of the secretary.

We recommend that a third member be added to the Municipal Commission to replace the secretary, and that the secretary not sit as a member of the Commission. His role should be that of an Executive Secretary to the Commission, responsible for gathering factual information pertaining to proposals before the Commission, making arrangements for hearings and explaining Municipal Commission procedures to those who request such information. We believe that this is an important position and that the Executive Secretary should receive a salary which will be high enough to attract a highly-qualified individual.

c. Commission Budget Should Be Increased.

In the past the Municipal Commission has been dependent upon the information presented at the hearing or such information as could be garnered from the files of agencies, such as the Metropolitan Planning Commission. On occasion, the information presented by different groups at the Municipal Commission hearings has been rather incomplete or even contradictory, but because of a lack of funds the Commission has been unable to develop factual information on its own.

We believe that the Commission should be given a budget which would permit it to develop the necessary information, either through the

use of a small staff of its own or by contract with existing public agencies, such as the Metropolitan Planning Commission or the State Planning Office, or with private consultants.

d. Commission Should Be Permitted to Collect Filing Fees.

Under the present act, there is some doubt whether or not the law authorizes the Municipal Commission to charge a filing fee for petitions brought before the Commission. We believe the law should be amended to clearly permit the Commission to establish, levy and collect filing fees for petitions brought before the Commission.

e. Two County Officials Should Become Ex Officio Commission Members on Annexation Petitions.

One criticism which has been made of the Commission is that there has not been any local representation on the Commission in hearings involving the annexation of land. The present law provides that the Chairman of the County Board and the County Auditor shall sit as ex officio voting members of the Commission on hearings about a petition to incorporate a village or merge two or more municipalities.

We recommend that the law should be amended to require the two county officials also to sit as ex officio voting members of the Commission on hearings involving petitions for the annexation of unincorporated territory. While some people fear that the county officials are too close to the local situation and that their judgments might be more political than judicial, we believe that this fear is outweighed by the consideration that the participation of the county officials would provide the Commission with a greater insight into the local factors involved in the proposal and provide for a representation of the local viewpoint in the Commission's decisions.

4. Approval of an Annexation by the Area Being Annexed Should NOT Be Required.

The Municipal Commission Act provides that within the metropolitan area the Commission shall hold hearings on petitions for the annexation of unincorporated territory to a municipality, and if the Commission finds that the annexation would "be to the best interest of the village or city and of the territory affected," the Commission may order the annexation to take place without a vote. Several bills have been introduced into the Legislature which would require ratification of the Municipal Commission's orders by a referendum within the area to be annexed.

There are many factors to be considered in a proposed annexation other than the wishes of the residents of the area to be annexed, who, in some instances, wish to avoid annexation merely to avoid assuming the responsibilities of urban living. One of these factors is the interest of the residents of the adjoining municipalities in preventing unregulated substandard development which would have a blighting influence on their homes. In some states, such as Texas, this interest is given such great recognition that the cities have the power to annex by ordinance. The Minnesota procedure is better than this, since it provides for a quasi-judicial review by an impartial state authority which determines the interests of all the parties involved, in accordance with standards set forth by the State Legislature.

We do not believe that the law should be changed to require approval of a proposed annexation by a referendum within the area being annexed. Passage of such legislation would be a step backward which virtually would put an end to annexation of the metropolitan area. Therefore, we urge the Minnesota Legislature not to make this change in the Municipal Commission Act.

WHY THE MINNESOTA MUNICIPAL COMMISSION WAS ESTABLISHED

The 1957 Minnesota State Legislature established a legislative interim commission on municipal annexation and consolidation. The law establishing the Commission (Chapter 833, Laws of 1957, Section 1) stated that the general purpose of the Commission was to "study the laws relating to the incorporation of cities and villages and the annexation of land to and the detachment of land from cities and villages and the laws granting special powers to so-called urban towns." The Commission was charged with the responsibility of formulating recommendations on a number of specific matters within the scope of its study, including the following:

"The extent to which reliance should be placed on statutory procedures for incorporation and boundary changes of cities and villages upon the petitions of affected land owners and elections among the voters of the area affected."

"The need for administrative review by an impartial agency of the public interest in proposed incorporations of cities and villages and the annexation of land to or detachment of land from cities and villages and the nature and scope of such review."

"The extent to which and the method by which other political subdivisions directly affected by a proposed incorporation of a city or village or a change in boundaries of a city or village should participate in incorporation, annexation or detachment proceedings."(1)

In reporting its findings, the 1957 Legislative Interim Commission stated, "We find that present Minnesota laws with respect to annexation, incorporation, consolidation and other municipal boundary changes are not adequate and sometimes are ineffectual to govern or administer orderly urban growth in the metropolitan area or in Minnesota's other growing cities."(2) The Commission cited testimony by a number of witnesses which indicated that:

"Representatives of existing villages have raced to the City Hall or Court House to file competing petitions to annex particular territory. Under present policy, the first to file has prior claim. Similar races have occurred with respect to other types of petitions.

"Residents have incorporated small areas unable to furnish the complete package of municipal services merely to avoid annexation to an existing adjacent contiguous village. These defensive incorporations have plagued nearly every major urban area in America.

"Other villages have been organized solely to pre-empt the tax base created by establishment of a new industry. This is unfair to those in the surrounding area and can raise real complications in respect to government finance.

"Villages have been incorporated for the single purpose of providing a liquor license to the sponsors of the incorporation petition, because under Minnesota law such licenses cannot be granted in an unincorporated area. In some instances, the liquor license is obtained in a new village which has no means of adequately policing the liquor license, and the responsibility falls to the sheriff, county attorney and county taxpayers.

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(1) Minnesota Laws of 1957, Chapter 833, Section 1

(2) Report of the Commission on Municipal Annexation and Consolidation, submitted to the 1959 Legislature of the State of Minnesota, Page 6

"A county attorney testified that he and the sheriff could substantially reduce their law enforcement staff were it not that villages have been incorporated in his county with no hope of furnishing those services for themselves. He further testified that the same villages must depend upon other county officials to perform other village functions at expense to the taxpayers of the entire county.

"Virtual islands have been created of unincorporated territory surrounded by an incorporated village.

"Gerrymandered municipal boundaries have created configurations even more ludicrous than those mentioned above because petitioning parties seeking incorporation or annexation have by-passed entire blocks or residential areas where a vote unfavorable to their petition might be cast. Thus, persons properly belonging in the incorporated area have been excluded, and vice versa.

"The village of Orono consists of four separate, distinct and detached parts, the main part of which completely surrounds the village of Long Lake.

"A portion of Crystal village is detached and completely within the village of New Hope. The small village of Hilltop lies within the village of Columbia Heights.

"White Bear Township now consists of some nine separate and detached parts, all of which except for one side of one part are surrounded by incorporated municipalities.

"The small village of Loretto is now dwarfed and surrounded by Medina village."(3)

At the conclusion of its study the 1957 interim commission recommended the enactment of a law creating a municipal commission to hear petitions for the incorporation of villages, annexations to municipalities, and detachment of property from municipalities. The report states:

"We find that the establishment of a statewide administrative commission to apply legislative standards in hearing and determining petitions for the incorporation of new villages or for municipal boundary changes is indispensable to sound public policy in administering the future urban growth in Minnesota. We have found no expert opinion extant which disagrees. We have encountered but one witness who thinks present incorporation procedures are adequate. Even on the sensitive question of the level at which administrative review should exist, there was a surprising unanimity of opinion that incorporations and annexations are a matter of statewide policy requiring a statewide commission to administer them."(4)

The commission report included a proposed bill to establish a Minnesota Municipal Commission and recodify and revise all of the laws relating to the subject of incorporation, annexation and detachment. The bill, with some modifications, was enacted by the 1959 Minnesota Legislature, thereby creating the Minnesota Municipal Commission.

The subject of municipal incorporations and boundary changes was given further attention by a legislative interim commission on municipal laws, which was established by the 1959 Legislature. In its report, the 1959 interim commission stated that the Municipal Commission was substantially achieving "its purpose of

(3) Ibid., pp. 12-13
(4) Ibid., p. 14.

discouraging the incorporation of uneconomic villages and of permitting the orderly development of municipalities by the process of annexing unincorporated property as it becomes developed and approaches urban character."(5) The report also stated the finding that "Within the Twin Cities metropolitan area orderly urban growth would be promoted by permitting annexation of unincorporated areas which are the normal extension of the growth of our suburban cities and villages without requiring a public vote."(6) The 1959 interim commission recommended several changes in the Minnesota Municipal Commission Act, the most notable of these being a recommendation to amend the act to permit annexation of unincorporated territory within the Twin Cities metropolitan area without a public vote in the area to be annexed.

As a result of these recommendations, the 1961 Legislature did make a number of amendments to the Municipal Commission Act, including an amendment which made the order of the Commission final in the case of petitions for the annexation of unincorporated territory within the metropolitan area.

SUMMARY OF THE MINNESOTA MUNICIPAL COMMISSION ACT

In its present form, the Minnesota Municipal Commission Act establishes a three-man commission to hear petitions for the incorporation of property into villages; the detachment of property from municipalities; and the annexation of property to municipalities. The Commission is composed of three members appointed by the Governor. The secretary, who is one of the three members of the Commission, is expected to devote "full time to the duties of his office."(7) The other two commission members receive a per diem payment for the performance of their duties.

The chairman of the Board of County Commissioners and the County Auditor of the county in which all or a majority of the property to be annexed or incorporated is located sit as ex officio members of the Commission on hearings for the incorporation of a village or the annexation of an incorporated municipality by a contiguous municipality, thereby increasing the size of the Commission to five members in these proceedings. In those proceedings in which the Commission is composed of five members, no orders of the Commission shall be final unless approved by three of the five members. In all other proceedings, no order of the Commission shall be final unless approved by two of the three members.

Incorporation of a Village

This act provides the only means of incorporating a village within the metropolitan area or in any county containing a city of the first or second class or in other parts of Minnesota if a petition is filed to incorporate a new municipality within four miles of the boundary of an existing municipality. (In other parts of the state, a petition to incorporate is filed with the Board of County Commissioners.)

A petition to incorporate a village may be initiated by three or more resident freeholders of any area containing platted property and a population of 500 or more people. The Commission is required to hold a hearing on the petition and, pursuant to the hearing, the Commission "shall approve the petition for incorporation if it finds that the property to be incorporated is now or is about to become urban or suburban in character" and "may approve the petition if it finds that the existing

(5) Report of the Commission on Municipal Laws, submitted to the 1961 Legislature of the State of Minnesota, p. 9.

(6) Ibid.

(7) Minnesota Laws of 1961, Chapter 645, Sect. 1, Subd. 6

township form of government is not adequate to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter."(8) The act states "The petition shall be denied if it appears that annexation to an adjoining municipality would better serve the interests of the area."(9)

The Commission is required to make findings on the following factors "as a guide in arriving at a determination":(10)

1. The population within the proposed incorporation.
2. The area of the proposed incorporation.
3. The area of platted and unplatted land within the proposed incorporation.
4. The character of the buildings within the area.
5. Past expansion in the area.
6. Prospective future expansion.
7. The assessed value of platted and unplatted lands within the area.
8. The present and expected necessity and feasibility of providing governmental services, such as sewage disposal, water systems, zoning, street planning, police and fire protection within the area.
9. The adequacy of the township form of government to cope with the problems of urban or suburban growth in the area proposed for incorporation.

The Commission is authorized to alter the boundaries of the proposed incorporation by increasing or decreasing the area to include only that property which "is now or is about to become urban or suburban in character."(11) (If the boundaries are increased, the Commission is required to mail notice to the property owners within the area to be added and to hold another hearing on the proposed incorporation.)

If the Commission approves the incorporation, the Commission's order shall fix a date for an election on the question of the incorporation within the area to be incorporated. (In its order the Commission may also provide for the election of trustees by wards within the municipality.) If a majority of those voting vote for incorporation, the Commission shall execute an incorporation order and the incorporation is thereby completed. If the election is unsuccessful, the Commission cannot consider any petition to incorporate the same territory within the next two years.

Annexation of Unincorporated Property to a Municipality

A petition for the annexation of adjoining unincorporated property may be initiated by:

1. The annexing municipality.
2. The township containing the area proposed for annexation, or
3. 20% of the freeholders, or 100 freeholders, whichever is less, residing in the area to be annexed.

The approval of the governing board of the annexing municipality is required if the petition is not initiated by the annexing municipality.

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(8) Ibid., Sect. 2, Subd. 3.

(9) Ibid.

(10) Ibid.

(11) Ibid., Sect. 3, Subd. 4.

After receiving the petition, the Municipal Commission holds a hearing on the proposed annexation. The Act provides that the Commission shall approve the proposed annexation if it finds that the ptoperty to be annexed is now or is about to become urban or suburban in character. In any case, the Commission may approve the annexation if it finds that "municipal government of the area is required to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter, and if it finds that the annexation would be to the best interests of the village or city and of the territory affected." "The petition shall be denied if it appears that the primary motive for the annexation is to increase revenues for the annexing municipality and such increase bears no reasonable relation to the value of benefits conferred upon the annexed area."(12)

The Commission is to make findings on the following factors "as a guide in arriving at its determination":(13)

1. The relative population of the territory to be annexed and the annexing municipality.
2. The relative area of the two.
3. The relative assessed valuation of the two.
4. Past and probably future expansion of the annexing area.
5. The availability of territory to accommodate that expansion.
6. Whether taxes can be reasonably expected to increase in the annexed territory and whether the expected increase will be proportional to the benefit which the annexed territory will receive as a result of the annexation.
7. The presence of an existing or reasonably anticipated need for governmental services in the annexed territory.
8. The feasibility and practicability of the annexing territory providing these governmental services when they become necessary.
9. The existence of an organized township within the area to be annexed and its ability and necessity of continuing as a township after the annexation.
10. The adequacy of the township form of government to cope with problems of urban or suburban growth in the area proposed for annexation.

The Commission is authorized to alter the boundaries of the area to be annexed either by increasing or decreasing the area so as to include only that property which is now or is about to become urban or suburban in character, or to preserve or improve the symmetry of the area.

Within the metropolitan area the order of the Commission either approving or denying the annexation is final. This means that unincorporated territory may be annexed without a vote of the people within the territory being annexed. For annexations within other parts of Minnesota, an order of the Commission approving an annexation establishes the date for an election on the proposed annexation within the area being annexed. In this instance, the annexation becomes final if it is approved by a majority of those voting on the proposal within the area to be annexed.

Unincorporated territory abutting on a municipality may be annexed to the municipality by ordinance and without a petition to the Municipal Commission or an order of the Municipal Commission if:

(12) Ibid.
(13) Ibid.

1. The land being annexed is owned by the municipality.
2. The land to be annexed is completely surrounded by land within the municipal limits of the municipality, or
3. The land to be annexed is platted or, if unplatted, does not exceed 200 acres and the owner or a majority of the owners in number have petitioned the governing body of the municipality for annexation. (The third provision is the one which was used in the annexation of the Black Dog Power Plant by the City of Bloomington. This annexation is still being contested in the courts.) The Municipal Commission does not participate in any way in any of the proceedings for annexations by ordinance, except to perform the ministerial duty of receiving and filing a copy of the municipality's annexation ordinance.

Annexation of Incorporated Property to a Municipality (Mergers)

This act provides the only means for the annexation of one municipality by another within the metropolitan area or in any county containing a city of the first or second class. A petition for a hearing on the annexation of a municipality by a more populous contiguous municipality may be initiated by:

1. Resolution by either of the municipalities.
2. Notice to the affected municipalities by the Municipal Commission of its own motion, or
3. By 10% or more of the legal voters of the municipality to be annexed, as determined by the number of votes cast for Mayor at the last municipal election.

The term "contiguous" includes a situation where three or more municipalities are the subject of a single petition and all are connected by common boundaries so that each municipality shares a common boundary with at least one of the included municipalities. If the petition for annexation has not been initiated by the annexing municipality, a resolution from the annexing municipality which approves the annexation must be obtained before the Commission can start hearings on the proposed annexation.

The Commission shall approve the petition if it finds that the annexed municipality is so conditioned and so located as properly to be made a part of the annexing municipality and if it finds that the annexation will be for the best interest of the municipalities. As a guide in arriving at a determination, the Commission shall make findings on factors similar to those factors listed under the annexation of unincorporated territory and shall also make findings as to:

1. Whether the results of the annexation will be to provide more economical and efficient governmental services, such as water system, sewage disposal, road maintenance, public recreation and planning, fire and police protection, and
2. The existing indebtedness of both municipalities.

If the Commission approves of the annexation its order shall provide that each municipality shall remain separately liable for its debts existing and outstanding at the time of the annexation and shall submit the order to the governing bodies of the municipalities involved for their approval. If the order is rejected by the governing bodies, the proceedings are terminated. If the order is approved by the governing bodies, the order shall then fix a date for an election within each municipality to be annexed. The annexation is completed if a majority of all those voting on the question within the municipality to be annexed approve of the annexation.

The new municipality assumes the name of the annexing municipality unless another name has been chosen prior to the annexation and the number of license privileges in the municipalities prior to the annexation are not diminished as a result of the creation of a single municipality by the annexation.

Townships Containing Population in Excess of 2,000 People

The Municipal Commission is required to review each township which contains a population of 2,000 or more people and to determine whether all or part of such a township will best be served by incorporation, annexation or remaining as a township. The law states that the land contained in any township with a population of 2,000 or more people "shall be deemed to be urban or suburban in character for the purpose of incorporation or annexation." (14) After its review, if the Municipal Commission determines that incorporation or annexation will "best serve the area"(15), the act permits the Commission to initiate proceedings for the annexation or incorporation of all or a part of any such township.

Detachment of Property from a Municipality

A petition for the detachment of property which is situated within a municipality and adjacent to the municipal boundary and which is unplatted and is occupied and used exclusively for agricultural purposes may be initiated by:

1. Resolution by the municipality, or
2. All of the landowners of the land to be detached, if the area is less than 40 acres, and by 75% of the owners if the area to be detached is over 40 acres.

If the municipality and the owners of the land both submit identical petitions, then no hearing is necessary. However, in all other instances, the Commission is required to hold a hearing.

The act provides that the Commission shall grant the petition for detachment if it finds that the property meets the requirements set forth above and that the detachment would not reasonably affect the symmetry of the settled municipality and that the land is not needed for reasonably anticipated future development of the municipality. The Commission is also authorized to increase the area of the property to be detached or to include only a part of the proposed area in its order. The order of the Commission ordering the detachment is final and not subject to approval by either the municipality or the residents of the area.

This section also provides for the concurrent detachment of property from one municipality and annexation by an adjoining municipality where such an intention is signified by concurrent resolutions of the governing bodies of the two municipalities. The Commission may order the proposed detachment and annexation to take place without a hearing after receiving resolutions requesting the detachment and annexation from each of the municipalities involved. The order of the Commission is final and not subject to the approval of the residents of the area.

Appeals

Any person aggrieved by any order of the Commission may appeal to district court upon the grounds that:

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(14) Ibid., Sec. 5, Subd. 2
(15) Ibid., Sec. 5

1. The Commission had no jurisdiction to act,
2. The Commission exceeded its jurisdiction,
3. The order is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected, or
4. The order is based upon an erroneous theory of law.

The court is authorized to change or suspend the Commission order if it determines that the action of the Commission is unlawful, unreasonable or not warranted by the evidence. If this is done, the matter is to be remanded to the Commission for further action in conformity with the decision of the court. The decision of the district court may be appealed to the Supreme Court.

RECENT DEVELOPMENTS

In the two-year period between the establishment of the Municipal Commission in 1959 and the amendment of the act in 1961, the Municipal Commission received only two applications for the incorporation of new villages within the metropolitan area. This led the 1959 legislative interim commission to note in its report that, "The Legislature sought by the enactment of Chapter 686 to halt the continued fragmentation of the metropolitan area by increasing the number of municipalities like rabbits for any number of perfidious reasons, including avoidance of annexation or to obtain a liquor license or to pre-empt the tax base and prevent an adjoining municipality from obtaining it. The provisions to prevent the multiplication of municipalities have been largely self-executing. The creation of the Minnesota Municipal Commission, the raising of the population requirements, and the establishment of statutory standards have discouraged this activity so drastically that there have been only two applications to incorporate within the metropolitan area since the effective date of the new law, April 24, 1959."(16)

More recently, however, the Municipal Commission has been presented with an increased number of petitions for incorporations and annexations. A number of these petitions resulted from the City of Bloomington's action in annexing the Black Dog Power Plant through the so-called "200 acre provision" without the approval of the Commission and Bloomington's concurrent petition to annex the remainder of Burnsville Township. This action prompted a large number of townships, particularly in northern Dakota County, to petition for incorporation. The filing of many of these petitions apparently was prompted by a fear on the part of the township officials and residents that choice portions of their township would be annexed by adjoining municipalities through the use of the "200 acre provision" or that the Municipal Commission would order the annexation of all or part of their territory to an adjoining municipality in response to a petition for such an annexation from an adjoining municipality.

Since its establishment, the Municipal Commission has authorized the incorporation of three new municipalities within the metropolitan area (Minnetrista, Eden Prairie and St. Francis), which subsequently voted to incorporate, and has denied two petitions for incorporation (Dayton Township and the Orchard Gardens section of Burnsville Township). In addition, the Commission authorized the annexation of the Village of Island Park by the Village of Mound, and this annexation was subsequently approved by the residents of Island Park and the two municipalities have been consolidated. In response to petitions, the Commission has ordered the annexation of territory to the municipalities of Forest Lake in Washington County

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(16) Report of the Commission on Municipal Laws. Op. cit., p. 44.

and Chaska in Carver County, and it has denied Bloomington's petition for the annexation of Burnsville Township. Within the past month the Commission also has ordered the annexation of most of White Bear Township to White Bear Lake City, with the remaining pieces to be annexed by other adjacent municipalities.

In the case of the petitions for the incorporation of the townships of Burnsville, Eagan, Lakeville and Inver Grove in northern Dakota County, the Municipal Commission issued an interim memorandum opinion which, in effect, advised the separate townships petitioning for separate incorporation of contiguous areas to reconsider the situation in terms of its areawide ramifications. This petition asks the public officials and the citizens within each of these townships to suggest remedies for the solution of their needs, other than the separate incorporation of each township. In the case of these townships, the Municipal Commission has chosen to proceed under the provisions of the act applying to townships with populations in excess of 2,000 people and consolidated the hearings relating to all of these townships into a single hearing. As of this time, the Municipal Commission has not issued an order in regard to these townships. At this time the Commission also is considering petitions for the incorporation of Woodbury and Cottage Grove townships in Washington County and petitions to annex Lincoln Township and Willernie Village to Mahtomedi Village.

As a result of the hearings on these petitions, the Municipal Commission has been the subject of much comment and criticism. Much of the controversy surrounding the Municipal Commission has been based upon the fears of people living within unincorporated territory that the Commission could order the annexation of their property to adjoining municipalities without their approval. Partially in response to this and partially as a reaction to the Bloomington move to annex the Black Dog Power Plant, a number of bills have been introduced into the Legislature to change the Municipal Commission Act.

EVALUATION OF 1963 BILLS TO AMEND THE MUNICIPAL COMMISSION ACT

HF396

The most drastic of the bills which have been introduced is House File 396, introduced on February 4 by Representative Walter Klaus of Dakota County and Representative Ralph Jopp of Carver County. This bill would eliminate the Minnesota Municipal Commission by repealing the Municipal Commission Act and would establish new procedures for incorporations, mergers, annexations and detachments.

Clearly, if this bill were passed, it would be virtually impossible for any municipality to annex any territory, while incorporation of any section containing 100 or more people would be a relatively easy process. The bill appears to be based upon a philosophy which is almost the reverse of the underlying philosophy of the Municipal Commission Act. As quoted earlier, the 1959 legislative interim commission report states that one of the major goals of the Municipal Commission Act was to discourage the incorporation of a large number of new and uneconomic municipalities.

In our opinion, this bill would create a situation similar to, and perhaps even worse than, the situation which existed prior to the establishment of the Municipal Commission. We are strongly opposed to the provisions of this bill and do not believe it should be passed.

HF159

None of the other bills which have been introduced are nearly as drastic as HF396 and none of the others would eliminate the Municipal Commission. Most notable

of the other bills is House File 159, which was introduced on January 24 by Rep. Richard O'Dea of Washington County, and has already been passed by the House of Representatives. This bill amends the Minnesota Municipal Commission Act so as to require that an order of the Commission approving the annexation of unincorporated territory would have to receive approval by a referendum within the territory to be annexed before the annexation order could become final. The bill would do this by deleting the language which makes the order of the Commission final if the area to be annexed is located within the metropolitan area.

As stated elsewhere, we do not believe that this change should be made and, therefore, we do not believe this bill should be passed.

HF315

A third bill, House File 315, introduced on January 31 by Rep. Rasmussen of Dakota County would amend the so-called "200 acre provision" so as to require the approval of the town board of the town containing the area to be annexed before a municipality could annex any territory by ordinance under this provision. (The "200 acre provision" permits a municipality to annex by ordinance any unincorporated territory of 200 acres or less upon the petition of a majority of the owners of the land to be annexed.)

Although we are in favor of a modification of this provision, as explained elsewhere, we would prefer a change which would require Municipal Commission approval of such annexations. Therefore, we do not favor the passage of this bill.

SF6

A fourth bill, Senate File 6, introduced January 9 by Senator Salmore of Washington County and Senator Hoium of Anoka County, in effect would combine the amendments proposed in HF159 and HF315. This bill would simply repeal the "200 acre provision," thereby requiring the Municipal Commission to hold hearings on proposed annexations within the metropolitan area, regardless of the size of the area to be annexed. The provision in this bill which would require a vote on the question of annexation by the residents of the area to be annexed is identical to the provisions of HF159.

The provisions of this bill to repeal the "200 acre provision" are consistent with our recommendations on this matter. However, as stated elsewhere, we do not believe that the act should be changed to require a referendum on annexations and, therefore, we are opposed to the passage of that portion of SF6.

Other Proposals

While it has not as yet been introduced, we understand that the Municipal Commission is also planning to present some amendments to the Legislature. Apparently, most of the Commission's proposals would be of a perfecting nature designed to improve the operation of the Commission within its present law. However, there is reason to believe that the Commission will request two amendments of a substantive nature which have been recommended by the League of Minnesota Municipalities:

1. A change which would require notice to affected governmental units, including the Municipal Commission, of proceedings for annexations under the "200 acre provision" with mandatory review by the Commission where any governmental unit involved or affected objects to the annexation.

2. A change which would permit the Municipal Commission to establish a ward system in a municipality as part of an annexation order, in order to protect the annexed territory and assure representation for the area being annexed.

The first of the proposed changes is consistent with our recommendation concerning the "200 acre provision," and, therefore, we would support such a change. We have not considered the second change and, therefore, we are not prepared to take a position on this proposal at this time.

DISCUSSION OF MAJOR FINDINGS AND RECOMMENDATIONS

In previous sections of this report we have quoted at length from the reports of the two legislative interim commissions to illustrate some of the conditions which prompted the Legislature to establish the Minnesota Municipal Commission. We believe that the previous situation was sufficiently serious to indicate clearly the need for adequate standards which could be used as a basis for evaluating proposals for incorporations and annexations and an impartial body which could apply the standards in the public interest.

The Minnesota Municipal Commission is being watched with interest in many other states. It has been widely proclaimed by many experts in local government to be the best legislation of its kind. In several states, such as California, study commissions have recommended the passage of similar legislation.

Prior to the establishment of the Minnesota Municipal Commission, the most advanced procedures for annexation of territory were found in Virginia, which had adopted an annexation law providing for judicial deterimination of annexation proposals in 1904. This law provides for the selection of a panel of circuit court judges to determine when the boundaries of cities and towns should be readjusted. Under terms prescribed by the Legislature, however, many people felt that because of the issues and the nature of the decisions in annexation actions, a state administrative agency or a tribunal possessing quasi-judicial powers would be preferable to an annexation court composed of circuit judges. Such a tribunal was proposed in 1955 by Professor Chester W. Bain of the University of Virginia who contended that the special annexation courts are temporary agencies which do not accumulate and use a sustained body of knowledge.(17)

In establishing an administrative body to review proposals for the establishment of municipalities or proposals for boundary changes in accordance with standards developed by the State Legislature, the Minnesota Municipal Commission Act generally follows this recommendation.

We firmly believe that during the past few years the Minnesota Municipal Commission has introduced an element of order into a situation which was quite chaotic. We also agree with Municipal Commission Secretary, F. Robert Edman, that "The commission has made a great contribution as a catalyst and forum for community discussion, community participation and awareness of problems of services and territorial changes."(18) If nothing else, the existence of the standards and the requirement that proposals be presented to the Municipal Commission has required the sponsors of proposed incorporations or annexations to formulate their proposals with extreme care and to consider all of the pertinent factors involved in a particular situation

(17) The Council of State Governments, The States and the Metropolitan Problems, 1956, p. 48.

(18) Betty Wilson, Capitol Comments, St. Louis Park Dispatch, February 21, 1963.

In short, passage of the Municipal Commission Act has laid down the rules for these complex and often controversial proceedings and has provided an umpire.

We believe that the continuation of the Municipal Commission is vital to the sound development of the metropolitan area. Therefore, we strongly recommend the continuation of the Minnesota Municipal Commission without any diminution in its present powers, and we urge the 1963 Minnesota Legislature to reject the attempts which are being made to repeal the Minnesota Municipal Commission Act and the attempts which are being made to curtail the powers of the Commission.

Annexation Referendums

The portion of the Municipal Commission Act which has created more controversy than any other is that relating to the annexation of unincorporated territory within the metropolitan area. A number of people have argued that the act should be changed so as to permit the residents of the area to be annexed to decide whether or not annexation should take place. Bills to accomplish this have been introduced into the State Legislature, and one such bill has already been passed by the House of Representatives (HF159).

We do not believe that this change should be made. The 1951 report of a Virginia State Commission to study urban growth states, "After mature deliberation, the commission decided against recommending an election in annexation either on an advisory or binding basis. . . The problem of placing citizens with common interests under a common government will not be solved by an election."(19)

More recently, the U. S. Advisory Commission on Inter-Governmental Relations, which was established by the U. S. Congress in 1959 and is composed of U. S. Senators, U. S. Representatives, State Legislators, State Governors, Mayors, County Board members and others, recommended in 1961 that a state law should authorize municipal annexation of unincorporated areas without the consent of the areas being annexed. The recommendation was part of a package of recommendations to the states to provide what the commission termed "an arsenal of remedial weapons to be drawn upon by metropolitan areas."(20)

In commenting upon this recommendation, Dean Jefferson B. Fordham of the University of Pennsylvania Law School wrote, "It is possible, by a thoughtful attack upon the subject, to develop and articulate substantive standards as to annexation, which gear annexation to the problems and needs of an entire urban area with due account of the more particular interests associated with an area sought to be annexed. In the second place, the administration of annexation policy ought to be detached from the people immediately concerned. Assuredly, there should be a procedure which provides interested persons free and full hearing, but the responsibility for decision-making ought to be placed in independent hands. The most obvious choice here lies between a court, a state agency, and the governing body of a larger unit in which the urban area affected lies, which would normally be a county. One is aware that experience in some states, notably Virginia, has attracted considerable support for the view that responsibility should be rested upon the judicial branch. This approach is not accepted here. The function of decision-making in annexation is considerably different from the normal adjudicative role of the courts. It is true that the proceedings may take on some adversary characteristics, but the court will not be simply disposing

(19) Report of the Virginia Commission to Study Urgan Growth, 1951, p. 6.

(20) U. S. Advisory Commission on Intergovernmental Relations, "Governmental Structure, Organization and Planning in Metropolitan Areas," 1961.

of a case or controversy, it will be trying to effectuate legislative policy in the prospective working out of governmental arrangements. A county governing body, moreover, may not, in actuality, have real detachment. Much can be said for the new Minnesota approach of employing a state agency. A governmental arrangements of this sort has the potential of maximum detachment in the state scheme and the persepctive of the state agency is likely to be wider than that of the governing body of a county. It has the opportunity, moreover, to develop grasp through experience."(21)

We concur with Dean Fordham in his support of the annexation provisions of the Minnesota Municipal Commission Act. We also agree with his statement that, "to give the voters or the property owners in an area proposed to be annexed the final say is to provide for private decision of public questions."(22) We believe that there are factors other than the wishes of the residents of the area to be annexed which must be considered in evaluating a proposed annexation. Certainly, the adjoining municipality is concerned with the possibility of unregulated substandard development taking place in the adjacent unincorporated territory. Certainly, the people in adjacent communities are concerned about the possibility of developments which are incapable of providing adequate municipal services and which therefore could become a financial burden on the surrounding community and the county, as well as a potential blighting influence on the municipality.

We believe that the Municipal Commission Act in its present form permits an objective unbiased evaluation of all these factors by an impartial commission in accordance with standards established by the State Legislature. Under this procedure, neither the selfish interests of the residents of the area to be annexed (who perhaps wish to avoid annexation only to avoid assuming the responsibilities of urban living) nor the possible selfish interests of an annexing municipality (which perhaps is only desirous of annexing a particular property in order to increase its own tax base) determine whether or not an area is to be annexed. Instead, this procedure allows the question to be decided on its merits and through the hearings permits the various parties to present their case to the determining body. This is an orderly procedure which eliminates the need to gerrymander the boundaries of a proposed annexation in order to assure a favorable note on the annexation.

We believe that the passage of legislation which would require a favorable vote in an area to be annexed before an annexation could take place would virtually put an end to annexation and would therefore be detrimental to the orderly development of the metropolitan area. Therefore, we urge the Minnesota Legislature not to make this change in the Municipal Commission Act.

"Loophole" Annexations

The most used, and at times abused, section of the Municipal Commission Act is the so-called "200 acre provision." This "loophole" permits a municipality to annex any contiguous area which is less than 200 acres in size without the consent of the Municipal Commission, if the owner or a majority of the owners of the land, in number, have petitioned for such an annexation. The annexation is accomplished by the passage of a municipal ordinance.

The supposition behind this provision appears to be that there is no controversy in such annexations. Yet the experience in the Black Dog Power Plant annexation provides ample evidence that such is not the case. Also, the use of this provision has necessitated "gerrymandering" in order to obtain the necessary majority.

(21) U. S. Advisory Commission on Intergovernmental Relations, "Government in Metropolitan Areas," 1961, p. 19.

We believe that the question of annexation can be just as important to the individuals involved in an annexation of two acres as it is to those involved in an annexation of two square miles. Further, we believe that all annexations, regardless of their size, should be decided on the basis of the merits of the situation after giving due consideration to the interests of everyone involved in the annexation. Therefore, we recommend that this "loophole" be closed by amending the law to require the Municipal Commission to review and make a decision on every annexation within the metropolitan area.

We recommend that this same principle also should be applied to the other two "loopholes," which permit a municipality to annex by ordinance and without the approval of the Municipal Commission land which is owned by the municipality -- unincorporated land which is completely surrounded by the municipality. These two "loopholes" also should be closed by changing the law to require the Commission to make a decision on annexations.

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(22) Ibid.