CITIZENS LEAGUE REPORT

No. 176

The Minnesota Municipal Commission Where Now ?

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Citizens League
545 Mobil Oil Building
Minneapolis, Minnesota 55402

APPROVED
BOARD OF DIRECTORS
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TO: Board of Directors

FROM: Municipal Commission Review Committee, Greer Lockhart, Chairman

SUBJECT: The Minnesota Municipal Commission - Where Now?

CONCLUSIONS AND RECOMMENDATIONS

1. We believe that the need for a state agency to provide for orderly urban growth within the metropolitan area, and throughout the state, is as urgently needed now as when the Minnesota Municipal Commission was created in 1959. The concepts and philosophy underlying establishment of the Commission were and are sound.

2. The Commission must have the power to make meaningful decisions in the vital areas of its concern, incorporations and annexations, without being frustrated by local pressures. Broader interests than those of local resident-petitioners must be considered by the Commission - the interests of incorporated areas near by the areas proposed for annexation or incorporation, the interests of the many persons soon to be moving into new areas of urban development, and the interest of the state and of the metropolitan area.

3. We believe that the Commission has tried to carry out the intent of the original legislation under which it was established, but that the Commission has been impeded by:

a) The "right to veto" given to residents of areas proposed for annexation by the 1963 Legislature. There have been no affirmative public votes on annexations since 1963.

b) Unsatisfactory means for obtaining necessary technical information from planning bodies and others on the many essential factors which must be considered by the Commission in determining annexation and incorporation matters before it.

c) Lack of sufficient staff and funds so that it may act more effectively and expeditiously in the carrying out of its duties under the law.

4. We have examined the aspects of the proposed Municipal Commission legislation, suggested by the Legislative Research Committee, which we believe bear directly on the main purpose of the Commission, providing for orderly urban growth. While many of the provisions of the proposed legislation appear to be desirable from the point of view of improving the workings of the Commission, we find that the proposal fails to remedy the factors listed above, which we believe have impeded the Commission in the carrying out of its primary function.

a) The legislation fails to remove the "right to veto" provision in the law, except in "piecemeal" annexation situations. If the right to veto provision is not removed from the present Municipal Commission law, the committee believes that there will be few, if any, meaningful annexations proposed and that, if proposed, they will all be

vetoed locally, as has been the case since 1963. The committee finds little comfort in the flood of "200 acre" annexations taking place or in the anticipated large number of small annexations which would result from enactment of the proposed new "75% surrounded" provision in the law. The net result of annexations taking place exclusively on a "piecemeal" basis, without any real opportunity for accomplishment of meaningful larger area annexations, would be to defeat the original purpose of orderly urban growth which the Commission was established to serve.

b) Similarly, the proposed provision that, in considering incorporations, the Commission is prevented from significantly expanding the area for incorporation beyond that proposed locally would, we believe, effectively thwart the goal of orderly urban growth through creation of new communities, large enough, supported by a sufficient number of residents and an adequate tax base, to efficiently provide vital governmental services to its citizens.

c) If the representation on the Commission is changed in the manner provided for in the proposed legislation, limited local interests unsympathetic to the basic purpose for which the Commission was created would, in all likelihood, predominate on the Commission. In addition, the proposals to change the make-up of the Commission would preclude the possibility of persons serving on the Commission who live in outstate urban areas, and would unduly narrow the range of persons eligible for appointment.

d) The legislative proposals fail to address the problems of providing the Commission with necessary technical information from the Metropolitan Planning Commission and other planning groups, and of providing the Commission with sufficient funds and staff so that it may operate more effectively and expeditiously.

We recommend passage of legislation this session which would reaffirm the original concepts underlying the establishment of the Commission and strengthen the Commission by:

a) Doing away with the unworkable and inequitable "right to veto" provision in annexation matters.

b) Providing a means for the Commission to require necessary technical information from the Metropolitan Planning Commission or other planning agencies or experts on the important factors which the Commission must consider in annexation or incorporation matters.

c) Providing the Commission with sufficient staff and funds to operate more effectively and expeditiously in connection with all matters within its purview, including consideration of significant large area annexations and incorporations.

BACKGROUND AND SCOPE OF REPORT

The Citizens League in March, 1963, approved a report on the proper future role and authority of the Minnesota Municipal Commission. The Commission at that time, as now, was under legislative scrutiny and there were bills in the Legislature to materially alter the laws under which the Commission operates.

The 1963 Legislature passed two bills related to the Commission. Chapter 621 provided for referenda within the territory proposed for an annexation before the annexation order of the Commission could take effect. The Citizens League report had strenuously opposed such referenda. Chapter 807 made a number of other changes, several of which had been suggested in the Citizens League report, in the procedures and operations of the Commission.

Since 1963, there has continued to be controversy surrounding the Commission. Legislators, particularly from Dakota and Washington Counties, representatives from townships in these and other counties who have been affected by particular matters before the Commission, have argued for further changes in the Commission law or, in some instances, for abolition of the Commission, with transfer of its functions to the county boards of the various counties.

Late in 1963, a subcommittee of the Legislative Research Commission was appointed to hold hearings and make a report and legislative recommendations to the 1965 Legislature. Several hearings and meetings of this subcommittee were held between January and September of 1964. At the hearings, a number of persons interested in the business of the Commission were heard. Legislative Research Committee Publication No. 101, entitled "Minnesota Municipal Commission," and consisting of three proposed bills, was published in late January, 1965. This publication contains no discussion but, in addition to the proposed legislation, has brief notes on the proposed changes in each section of the Commission law.

The Citizens League's Legislative Action Committee had been following Municipal Commission affairs and had heard from State Senator Wayne Popham, a member of the LRC subcommittee, and from Commission Chairman Joseph Robbie. Upon the publication of the LRC bills, the Legislative Action Committee recommended to the Citizens League Board of Directors formation of a small committee to review the League's 1963 position on the Minnesota Municipal Commission and to prepare up-to-date findings and recommendations. The committee held its first meeting on February 10, 1965, and has held six meetings in all.

Committee members have included Greer Lockhart, Chairman, James L. Hetland, Jr., Vice Chairman, Reynold Boezi, Earl Colborn, Jr., David Graven, Paul Hauge, James Hawks, C. D. Mahoney, Jr., John Mooty, C. Donald Peterson and Clement Springer. Five of the committee members had served on the committee which developed the 1963 Citizens League report.

At the first meeting of the committee, serious note was taken of the fact that, since 1963, when the right to veto proposed annexations was given to persons living within the proposed annexation area, there have been no annexations where a public vote was required within the State of Minnesota. The committee also noted that the Legislative Research Committee's proposed legislation does not address the right to veto question, leaving this provision in the law. The bill proposes changes in the makeup and representation on the Committee. The legislation also contains other major restrictions on the Commission, such as preventing the Commission from significantly enlarging any area proposed for incorporation beyond the limits defined in the incorporation petitions as submitted to the Commission by local residents.

In the course of the committee's study we have reviewed the Minnesota Municipal Commission Act and the changes which have been made in it since 1959; 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; orders and opinions of the Commission; reports of the Advisory Commission on Intergovernmental Relations, and other literature in this field. We have reviewed the minutes of the 1963 Citizens League committee which held extensive meetings with various persons intimately acquainted with the establishment, history, and operations of the Commission. We have reviewed the minutes of the Legislative Research Committee subcommittee hearings held in 1964. We met with Mr. Irving Keldsen, currently Executive Secretary of the Minnesota Municipal Commission.

In this report we have not attempted to evaluate all details of the Municipal Commission Law, nor of many of the proposed changes in the law, particularly those concerned with procedures of the Commission. We also have made no attempt to evaluate the operations or authority of the Commission in counties outside the metropolitan area. Nor have we studied or considered the second and third proposed laws contained in Legislative Research Publication No. 101 and dealing with creation of rural and urban areas and providing for ordinances for approximate tax ratios for such areas, and the proposed law dealing with liquor licensing.

We have, however, reviewed very carefully the philosophy and concepts underlying the establishment of the Minnesota Municipal Commission, the activity of the Commission since its inception, in the light of these concepts and this philosophy, and those aspects of the proposed 1965 legislation which we believe bear directly on the main purpose for which the Commission was formed, namely to provide for orderly urban growth. In our study, therefore, we have concentrated on the following aspects of the Commission's responsibilities and of the Commission law or currently proposed changes in the law:

- The annexation vote question.
- "200 acre" annexations and the proposed "75% surrounded" annexations, as contrasted with the larger annexations which have, in several instances, been proposed by the Commission.
- Proposed incorporations along township lines, as contrasted with the position generally taken by the Commission favoring larger area incorporations. In this context, we have considered the proposed limitation on the Commission in connection with enlarging proposed areas for incorporation.
- The proposals to change representation on the Commission so that certain types of areas will or will not be represented on the Commission, and the proposal that only one attorney be allowed to serve on the Commission.

WHY WAS MINNESOTA MUNICIPAL COMMISSION ESTABLISHED?

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. As a result, there are now more than 130 individual cities and villages within the 7-county metropolitan area, and according to 1960 census figures more than one-fourth of them had less than 500 inhabitants in 1960.

The 1957 Minnesota State Legislature established a legislative interim commission on municipal annexation and consolidation. The Commission was charged with the responsibility of formulating recommendations on a number of specific matters within the scope of its study, including:

"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:

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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

"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.

"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 report continued (p. 9): "It is impossible to study the standards which should be met before a new village or city can be incorporated, without considering the social, economic, and other community aspects involved, or without a thorough understanding of the need for municipal services by those living within the affected area. It is equally impossible to decide if the standards for incorporating a new municipality are met without considering the impact on the surrounding metropolitan complex when the proposed new city or village lies within the metropolis or on the suburban fringe.

"Where uneconomic villages arise, the problem of furnishing municipal services to their people aggravate intelligent planning and all other aspects of government. Multiplying villages like rabbits can out-distance all progress affected by otherwise intelligent planning. These uneconomic villages may be costly to people living in the adjacent area, who must assist in paying for the required municipal services, for the village which is not reliant."

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.. . . . 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."(3)

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.

SUMMARY OF PARTS OF THE MINNESOTA MUNICIPAL COMMISSION ACT AND OF SOME OF THE PROPOSED CHANGES

Make-up of Commission

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 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 voting members of the Commission on hearings for the incorporation of a village or the annexation of unincorporated or incorporated areas by a contiguous municipality, thereby increasing the size of the Commission to five members. 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 other proceedings, no order of the Commission shall be final unless approved by two of the three Commission members.

The proposed changes in the representation on the Commission are:

a) Only one of the Commission members may be a lawyer (currently, all three Commission members are lawyers).

b) The three Commission members shall be: One from a first class city, a non-city member from the 7-county metropolitan area, and one from an "unincorporated rural area outside of the metropolitan area."

c) On incorporations or annexations of unincorporated land to a municipality, two County Commissioners from the county affected shall sit as voting members of the Commission while the Commission considers such matters affecting that county.

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(3) Ibid., p. 14. (emphasis added)

d) Staggered six year terms are established, with the three new members appointed as of July 1, 1965 to serve two, four and six years respectively.

Incorporation of a Village

The 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 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." (4) 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."(5)

The Commission is required to make findings on the following factors "as a guide in arriving at a determination":(6)

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."(7) (If the boundaries are increased, the Commission is required to mail notice to the property

(4) Minnesota Laws 1963, Chapter 807, Section 7.
(5) Ibid. (emphasis added)
(6) Ibid.
(7) Ibid.

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. 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.

A major change is proposed in the law in connection with incorporation. It provides that, if a petition for incorporation of a township or remnant of a township is filed and the population in the proposed new village is 2,000 or more, the Commission is precluded from expanding the proposed area for incorporation except by 5%.

By another proposed change, governing bodies of abutting incorporated and unincorporated areas may by resolution consolidate to form a single new municipality. The Commission shall order an incorporation without an election unless 20% or 500 persons (whichever is less) in either entity petition for an election, in which case an election shall be held in the area or areas which have petitioned for election. The election must carry by majority vote wherever held. This addition to the law will provide for the type of situation involved in the recent consolidation of Inver Grove and Inver Grove Township, which required special legislation in this session.

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.

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 property 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."(8)

(8) Minnesota Laws 1963, Chapter 621, Sect. 1, Chapter 807, Sect. 8

The Commission is to make findings on the following factors "as a guide in arriving at its determination":(9)

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.

Since 1963, 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.

The 1963 law also provided for Commission review of proposed annexations involving 200 or less acres, thereby curing the type of situation involved in the attempted annexation by Bloomington of the "Blackdog" power plant in Burnsville. Prior to 1963 such annexations of 200-acre or less areas were not reviewed by the Commission. In "200 acre" annexations no public vote is required.

The proposed changes include one whereby unincorporated areas 75% or more surrounded by a municipality may be annexed by the municipality by action of the municipality unless the township objects, in which case the Commission holds a hearing and issues an order. No vote is provided for in these instances. The existing law provides for such annexation if the land is 100% surrounded.

The Municipal Commission law also provides for mergers of two incorporated areas and for detachments of unplatted land from a municipality.

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(9) Ibid.

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."(10) After its review, if the Municipal Commission determines that incorporation or annexation will "best serve the area" (11), the act permits the Commission to initiate proceedings for the annexation or incorporation of all or a part of any such township.

COMMISSION ACTIVITY

The Commission has a yearly budget of $20,000 - $10,000 Executive Secretary, $4,000 Stenographer, $6,000 expense of hearings and meetings.

The Commission has recently reviewed, as it is required by the law to do every ten years, the 30 plus "urban townships", townships with over 2,000 population by latest federal census figures. According to its Chairman, the review revealed, among other things, that each of these townships in the state is the site of one or more "automobile graveyards", for the most part totally unregulated by the township authorities.

According to its Executive Secretary, the activity of the Commission since its startup in 1959 has included the following:

Incorporations - 12 petitions filed, of which the Commission has approved four (Eden Prairie, Burnsville, Minnetrista and St. Francis in extreme northwestern Anoka County). Since there has been one consolidation (Mound and Island Park) this means there has been a net increase in the number of incorporated areas in the 7-county metropolitan area of three since 1959. This compares with 36 new incorporations between 1950 and the inception of the Commission in 1959.

Detachments - 53 petitions, almost all approved unless withdrawn by petitioners before Commission action.

Annexations - 769 petitions had been filed with the Commission between its startup and February 17, 1965, almost all under the "200 acre" provision. (Prior to 1963 the Commission had no jurisdiction over 200 acre annexations beyond keeping a record of them.) At this time, according to Mr. Keldsen, there are approximately 30 "200 acre" annexations before the Commission for review. A great many more, about 60 from the Rochester area alone, are shortly expected, as a result of defeat at the polls of two large proposed

(10) Minnesota Laws, 1961, Chapter 645, Sect. 5, Subd. 2
(11) Ibid., Sec. 5

annexations in the Rochester area, he told us. This pattern of a flood of "piecemeal" annexations coming in following the veto by township residents of large area annexations proposed by the Commission has also occurred in the White Bear Township and other areas, he said.

Large vs. "Piecemeal" Annexations

Since 1963, aside from the "200 acre" annexations, there have been three annexation matters of significance proposed by the Commission and involving large areas, and all three have been roundly voted down by township residents in the area proposed for annexation. Two of these have been in the Rochester area and the third involved Lincoln Township in Washington County. In a fourth matter, that involving White Bear Lake and White Bear Township, following the provision for the veto vote in 1963, the Supreme Court remanded this proposed annexation for the purposes of a referendum, which was then held, and the annexation was roundly defeated.

In addition, the matter of the Commission's proposal for annexation of Chanhassen Township to Chaska is currently before the State Supreme Court. There was one other major annexation called the Federal Dam Annexation which, unlike the White Bear and Chaska situations, was not appealed to the Supreme Court following addition of the veto provision to the law in 1963.

COMMISSION'S POLICIES ON INCORPORATION AND ANNEXATION

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 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." (12)

More recently, however, the Municipal Commission has been presented with a greatly increased number of petitions for incorporations and annexations. A number of these petitions resulted from the City of Bloomington's action in attempting to annex the Black Dog Power Plant through the so-called "200 acre provision," prior to reform of the "200 acre" provision in 1963, whereby the Commission was given a power of review in those situations. This action prompted a large number of townships, particularly in northern Dakota County, to petition for incorporation of the existing townships as a series of new villages. There was a fear on the part of the township officials and residents that choice portions of their township would be annexed by adjoining municipalities, 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.

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

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 area-wide ramifications. This opinion asked 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 chose 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.

In this and other opinions the Commission has clearly stated its policies on annexations and incorporations in line with the statutory language set out above in this report. On Annexations the Commission has said:

> "In general, urban experience indicates that the remaining unincorporated land within metropolitan districts should be annexed to existing cities and villages as the need arises for municipal services except where there remains within one unified portion of the metropolis a sufficient amount of unincorporated property experiencing a rapid population growth to provide an adequate economic base so that the resulting newly created municipality can furnish governmental services as effectively and efficiently as they could be obtained by annexation."

On Incorporations, in its Northern Dakota County and other opinions, the Commission stated as its policy:

> "The Municipal Commission will shoulder its responsibility by approving no incorporation of a new municipality until it is convinced by reasonable proof that the proposed entity has an adequate tax base, a reasonable prospect of providing necessary services when it is completely organized, is not a part of a larger entity which would more adequately sustain municipal responsibilities, and would not be served better by annexation."

In the more recent case of the petitions for joint incorporation of Cottage Grove and Woodbury Townships in southern Washington County, the Commission was faced with a rival petition for incorporation of Cottage Grove alone. This it rejected in favor of the proposed joint incorporation stating:

> "The Municipal Commission favors reduction of the number of governmental units because of the evidence it has obtained in several dozen public hearings throughout the metropolitan area. The petition to create the Village of Washington advances this objective. We acknowledge that the answer to metropolitan problems lies in the willingness of local people in each segment of the metropolitan region to jointly plan, consult, and offer constructive solutions.
>
> "We can do nothing about urban sprawl if absence of adequate local jurisdictional authority provides an opportunity for

builders and land developers to profit by constructing isolated housing projects away from existing development. This "leap frog" growth is creating problems in providing municipal services within this region which will ultimately result in crisis as they relate to pure water and sewage disposal unless the practice is controlled.

"As between the proposal to incorporate both Cottage Grove and Woodbury as one municipality or to separately incorporate Cottage Grove and leave Woodbury's municipal future in doubt, we strongly endorse the joint solution."

The proposed joint incorporation was subsequently defeated at the polls. Reasons for the defeat which have been cited include the opposition of some builders and land developers active in the area, the alleged slowness of the Commission in issuing its order, and local hostility towards the Commission.

Study of the Commission's orders and opinions clearly shows that the Commission, in following the law under which it was established:

a) Generally favors annexations to existing incorporated areas wherever possible as opposed to new incorporations.

b) Tries to promote an "area-wide" approach to annexation and incorporation problems.

c) Favors large area annexations as opposed to many small "piecemeal" annexations.

d) Looks with reluctance to incorporations of townships along existing township lines.

TECHNICAL INFORMATION AND RESOURCES

As noted above, the Commission operates on a "bare bones" $20,000 yearly budget. Although the 1963 Legislature gave the Commission authority to "contract with regional, state, county or local planning commissions or to hire expert consultants to provide specialized information and assistance,"(13) no funds were appropriated for these purposes. For '65-67 $8,000 is requested for "technical help" from the 1965 Legislature according to the Commission's Executive Secretary.

In the LRC 1964 hearings a number of witnesses including Commission members requested access to technical assistance. Mr. Robert Edman, a former Commission member and former Commission Executive Secretary, stated: "I still oppose the concept of giving the commission professional help in order to prepare for hearings. I believe money should be made available for this particular purpose and whenever

(13) Minnesota Laws 1963, Chapter 807, Sect. 4.

there is an existing metropolitan or regional planning commission available that this group should have the responsibility of preparing the material for presentation at a particular hearing and they should be compensated for it. Where these organizations do not exist, I think professional help should be hired . . . If we ever get state planning in Minnesota, I would remove that last recommendation and recommend that this be a requirement and service performed by the State Planning Officer."

Mr. Joseph Robbie, the Commission Chairman, said: "I have never publicly or privately said that we should have staff, but I think we should have staff available either through the Metropolitan Planning Commission or through planning agencies, so that, when we are in situations where an adversary does not materialize, we could obtain people to examine the situation. Maybe there isn't another side, but at least we can have a basis for our judgment."

The Municipal Commission has been dependent upon the information presented at the hearing or such information as could be informally obtained from some agencies, such as the Metropolitan Planning Commission or the State Highway Department. On occasion, the information presented by different groups at the Municipal Commission hearings has been incomplete or even contradictory, but because of a lack of funds or the authority to require information from the Metropolitan Planning Commission or other area planning agencies, the Commission has been unable to have placed before it full information or charts and maps on such key basic matters as topography, watershed information, population projections, highway development, zoning and building codes, if any, and enforcement of same, and sewer, water and road plans, if any.

DISCUSSION OF FINDINGS AND RECOMMENDATIONS

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, has been considered to be the best legislation of its kind in any of the fifty states.

The original act as amended in 1961 has been followed by other state legislatures as they have felt the need to create state bodies to deal with the problems of urban growth.

In establishing a special competence 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 followed the recommendations of Professor Chester W. Bain of the University of Virginia, who had long studied problems of urban growth and who published detailed recommendations in 1956.(13)

We 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 former Commission Executive 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." 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 some care

(13) The Council of State Governments, The States and the Metropolitan Problems, 1956.

and to consider the pertinent factors involved in a particular annexation or incorporation situation.

Passage of the Municipal Commission Act had laid down the guidelines for these complex and often controversial proceedings and has provided an impartial administrative agency to review these matters on the basis of the guidelines stated in the statute and noted on Pages 8-10 of this report. This had introduced an element of order into the process whereby communities are born and grow.

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 further diminution in its present powers. We urge the 1965 Minnesota Legislature to reject the attempts to curtail the powers of the Commission. Furthermore, we believe that there is an urgent need to strengthen the Commission through the enactment of the recommendations we have proposed.

Annexation Referendum

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 cities have unrestricted power to annex by ordinance. The Minnesota procedure is better than this, since it provides for a review by an impartial state authority which determines the various interests involved, in accordance with standards set forth by the State Legislature.

The 1951 report of a Virginia State Commission to study urban growth stated, "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." (14)

More recently, the U. S. Advisory Commission on Intergovernmental 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. (15)

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 area with due account of the more particular interests associated with an area sought to be annexed. The administration of annexation policy ought to be detached from the people immediately concerned. A county governing body may not, in actuality, have real detachment. Much can be said for the Minnesota approach of employing a state agency. A govern-

(14) Report of the Virginia Commission to Study Urban Growth, 1951, p. 6

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

mental arrangement of this sort has the potential of maximum detachment in the state scheme and the perspective 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."(16)

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."(17)

It is a private decision, we believe, because it places an absolute veto in the hands of only one of the interests involved in these situations.

Is the interest of rural landowners in the path of imminent urban development automatically paramount to the interests of the great numbers of persons who will shortly be residents of these new urban areas? New residents have an interest in orderly development - in efficient sewer and water systems installed when needed, in a network of roads well laid out and capable of handling the traffic when the area is fully developed, in sound zoning and building codes so that their homes will be adequately constructed and located in proper proximity to industrial and commercial development, and in good schools and effective fire and police protection.

Are the rural landowners' interests automatically paramount to those of adjacent villages interested in orderly development of the new areas? Or are the local rural interests automatically paramount to the county's interest, or the metropolitan area's interest, or to the state's interest?

On balance and in the long term we do not believe these rural interests are or should be predominate. For this reason we consider the vote provision not only unworkable, as it has already proved itself, but also inequitable, for it takes into account only one small group's interest and disregards all other broader interests.

Growth Through "Piecemeal" Annexations Alone?

In 1963, we predicted that passage of legislation requiring an annexation vote "would be a step backward which virtually would put an end to annexation of the metropolitan area." It has put an end to annexation, except those small area annexations accomplished through the "200 acre" provision. By not coming to grips with the "right to veto" question, the LRC said, in effect, that annexations should proceed on a "200 acre" basis and on the basis of the "75% surrounded" provision the LRC has proposed. The subcommittee, in other words, is embracing "piecemeal" annexations at the expense of larger areawide solutions to the problems of urban growth.

Can the metropolitan area afford to proceed on the basis of "piecemeal" small area annexations alone? We believe it cannot. The overwhelming weight of expert testimony at the LRC hearings indicated it cannot. Persons who have closely observed the Commission without representing the interests of a particular township or area have indicated it cannot.

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

(17) Ibid. (emphasis added)

"My overall observation of the work of this particular committee today is that the Legislature originally established an interim commission and from that interim commission came the Municipal Commission Law, one that embodied certain basic philosophies. In the amendments that have taken place during the last two years and the patchwork type of approach we are taking now, I think that we are not really improving this law." This was the testimony of F. Robert Edman before the LRC. He went on to suggest that the subcommittee secure and study recent publications of the American Municipal Commission on annexation and incorporation experience in other states.

Piecemeal annexations serve useful purposes in limited small area situations to straighten boundaries and bring a small piece of land here or there into an incorporated area. But what is the result of "piecemealing it all the way," without recourse to any overall larger solution to an area's problems?

Take, for example, the situation in White Bear Township where, following a negative vote by township residents on a proposal to annex most of the township to the city of White Bear Lake, there has continued a flood of haphazard "200 acre" piecemeal annexations.

Years ago, the city of White Bear was formed out of the center of White Bear township. There followed many small annexations to the city of White Bear by small areas whose residents were so desperately in need of urban service that they petitioned to join the city. The city of White Bear Lake has had over 100 separate annexation actions since January, 1955, almost all accomplished under the "200 acre" provision. Another factor which stimulated this mass piecemeal type of annexation was the desire of commercial interests to locate in the area, but their unwillingness to locate there unless the parcel on which they intended to build was within an incorporated area.

These many small annexations have resulted in an impossible gerrymandering of the township, and in the divestment of the township of any significant non-residential tax base. The gerrymandering got so out of hand that when the Commission was considering the annexation of White Bear Township to White Bear Lake, three different maps were introduced into evidence which purported to show the boundary lines of the township. The county auditor, who had to determine the property which was within the township for purposes of spreading the tax levy, was using one map, which did not agree with that of the surrounding villages or that of the City of White Bear Lake.

Without orderly growth or planning, bankrupt governmental units, potential slum housing, and depreciation of individual home investment result. When basic urban services cannot be planned before the buildup of an area, the subsequent need for these services can, and often does, result in uneconomical redoing of sewer lines, unnecessary expense for such services as water and sewer to the residents, installation of undersized and poorly located streets and highways, and other manifestations of "urban sprawl", the Commission contended.

In White Bear Township, the Commission's opinion noted there had been little planning for community sewer or water. The township had a building and zoning code but, at the time of the hearing, there was only one copy of each for the entire township, and the township did not even maintain a fulltime office where residents, builders, inspectors or others could examine whatever regulations there were.

The net result of the situation in White Bear Township, the Commission said, has been uncontrolled development in widely dispersed areas, and subsequent annexation of these areas to the City of White Bear Lake after the damage had been done. Without the protection of adequate codes and planning in the unannexed areas, this process of "urban sprawl" continues unabated, the Commission argues.

The same type of pattern can be noted in other parts of the metropolitan area. The situation is not, however, confined entirely to the Twin Cities area. We were told that similar situations exist or are developing in such other parts of the state as Rochester, St. Cloud, Willmar, Albert Lea, Austin and Duluth.

The committee believes that the experience with the annexation votes provision has amply demonstrated that no meaningful large planned annexations can be accomplished in the metropolitan area, while the veto provision remains in the law. Without the opportunity for the Commission to guide the accomplishment of large area annexations, we are left with a growth pattern of "piecemeal" uncontrolled annexations such as now are being witnessed in White Bear Township and near Rochester, Minnesota.

We believe that repeal of the veto vote on annexations is essential to orderly urban growth through annexation. "Piecemeal" annexations alone cannot accomplish healthy growth of urban areas.

Incorporations Only Along Township Lines?

The LRC proposal for changing the incorporation provision of the law provides that, if a petition for incorporation of a township or remnant of a township is filed, and the population in the proposed new village is 2,000 or more, the Commission is precluded from expanding the proposed area for incorporation except by 5%.

This proposal would, for all intents and purposes, limit the size of new villages to areas of township size or less.

Townships were historically created, not as governmental units, but for surveying purposes. They are generally rectangular in shape and of equal size. Their boundaries do not normally take into account topographic or other natural terrain factors. While the original concept of townships was that they were holding areas, parts of which, as they approached urban development, would be annexed to surrounding municipalities, only more recently has a vested interest on the part of township government officials and some township residents in "preserving the township" developed. Existing townships generally bear no relationship to patterns of community development or of development of governmental services.

Defensive incorporations along township lines have plagued local government in virtually every state experiencing substantial urban growth. Incorporations to avoid annexation, to protect special land uses, to obtain liquor licenses for the promoters, to protect the name-identity of a township, to protect vested business interests from proper regulation by an adequate municipal government, or to preserve rural living in the midst of an urban area are, we believe, contrary to the public interest.

Creation of a new village or town should involve much more than taking a rectangle on a map and ascertaining that 2,000 or more people live within the boundary. The Commission law (see page 8 of this report) already sets out, we believe,

the proper guidelines for ascertaining whether a proposed incorporation should be allowed. In order to properly carry out its functions, the Commission should, we believe, have the power to adjust proposed boundaries for new villages to correspond with population and development growth patterns, the necessity for and possibility of the area's providing public sewer and water and other basic services, and other factors.

We emphatically reject the proposal to limit the Commission in expanding the area of a proposed incorporation. Enactment of this proposal, we believe, would be contrary to the whole philosophy and concept of the existing law and would, we think, be in substantial conflict with existing provisions of the law. Its enactment would, we fear, go a long way toward thwarting the goal of orderly urban growth through creation of new communities large enough, supported by a sufficient number of residents and an adequate tax base, to efficiently provide vital governmental services to its citizens.

Loss of Initiative Role

The committee believes that, if the "right to veto" is not removed in annexation matters, and if the LRC proposal limiting the Commission's role in determining the area for proposed new incorporations is enacted into law, the Commission will for all practical purposes have lost the power to initiate possible solutions to problems of urban growth. Under these circumstances the Commission's functions would be largely of a regulatory nature. It could reject "piecemeal" annexations after hearings, if local objections are raised so that a hearing is required. It could reject proposed incorporations of townships or smaller areas, either on its own initiative or on the basis of whatever objections might be raised at the incorporation hearings.

But the Commission could not with any prospect for success initiate large area annexations or possible incorporations involving more than one existing township, as it has tried to do in the past. It could not bring into play any element of expertize it has developed in urban problems except to reject locally initiated proposals. The net result would be to deny the Commission a role we believe the Legislature clearly intended--the role of a state agency which would develop special competence in urban growth problems and which would apply that competence in particular situations through initiating proposals for area-wide solutions.

Commission Makeup

The proposed changes in the representation on the Commission are: Only one of the Commission members could be a lawyer. The three regular Commission members shall be: One from a first class city, one from the seven-county metropolitan area (but not a City resident), and one from an "unincorporated rural area outside of the metropolitan area". On incorporations or annexations of unincorporated land to a municipality, two County Commissioners from the county affected shall sit as voting members of the Commission while the Commission considers such matters affecting that county. Currently the County Board Chairman and the County Auditor fulfill these roles.

In 1963, the Citizens League supported the change which was made to give county officials two votes on all annexation as well as incorporation matters. We said then:

"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."

At that time we also felt that, since the Commission had the final say in these matters (there was no "right to veto" then), local area interests needed representation on the Commission, as it considered matters of vital concern to particular communities and counties.

We still believe that county representation in connection with Commission consideration of these important matters is desirable. We seriously question, however, whether legislation which would provide an absolute 3 out of 5 majority to county and rural interests in connection with the votes on all of these matters would be a move in the direction of furthering orderly urban growth.

We question the philosophy behind any move to legislate the particular area from which each of the regular Commission members shall come. We have been told that there are many parts of the state besides the seven-county metropolitan area in which the Commission plays, or might play, an important role in aiding orderly future development. We note that in the LRC proposal vast areas of the state would have no possibility of having a member on the Commission. For example, a resident of Rochester, St. Cloud or Austin could not serve on the Commission as a regular member, under the LRC proposal.

The Minnesota House of Representatives is currently discussing a proposal under which two of the three regular Commission members would be from out-state areas. In this connection we note that all incorporations and over 90% of annexations during the life of the Commission have occurred within the Twin Cities metropolitan area. There are already about 130 municipalities in the metropolitan area. In addition, 82 townships in this area remain unincorporated. All 82 have, or will shortly have, problems of urban growth. Many of the 82 have already petitioned to incorporate along existing township lines, and others are reported ready to do so. In the next few years almost all incorporation and annexation activity will undoubtedly remain in the Twin Cities area. If the representation on the Commission is changed in the manner provided for in the proposed legislation, limited local interests unsympathetic to the basic purpose for which the Commission was created would, in all likelihood, predominate on the Commission.

It is hard to address the proposal that the Commission be limited to only one lawyer. Presumably, there could be two (or more, counting the two County Commission members), farmers, veterinarians or members of any other occupation or profession. The test of who should serve on the Commission should not be a man's occupation, but his knowledge of metropolitan problems and concern for achieving means for healthy and orderly orban growth and metropolitan development.

Beyond this, there is the practical problem of how many qualified persons from outstate areas might be found who would be able to travel constantly to the Twin Cities area where the vast majority of the Commission's problems are and where all or almost all hearings are held. We feel, with respect to both the proposals designating areas from which Commission members may and may not come, and the proposal limiting the Commission to one lawyer, that there is a real danger that

membership on the Commission might be unduly narrowed in terms of excluding competent persons, knowledgeable in the matters with which the Commission deals and willing to serve on the Commission.

Need for Technical Information at Hearings

We believe that it is vitally important that the Commission have before it necessary technical information in any given proceedings on such basic matters as population projections, water and sewer needs, prospects for developments of these and other governmental services in the area, topographic information, information on highway plans and development, etc.

We do not, however, believe that the Commission should develop a staff of its own for purposes of obtaining such information. Rather, we believe that, in the metropolitan area at least, the Twin Cities Metropolitan Planning Commission should have the duty of providing such basic information in these proceedings. We would not anticipate that the MPC would go into the specific territory under consideration and do a separate study, but that the MPC would bring together from the vast store of up-to-date information it has available to it, the basic data on the technical matters which the Minnesota Municipal Commission must consider as it makes determinations on annexations, incorporations, and other matters.

Outside the metropolitan area, there are greater problems in obtaining technical information, because there is not a state planning agency in existence. We believe that, in these situations, the Commission ought to be able to obtain the same type of data which we believe the MPC should provide it in connection with metropolitan area matters. This could be provided by local or area planning agencies, if any in the area, or by private planning firms. The Commission would have to be given an appropriation to cover the cost of obtaining such technical information outside of the metropolitan area.

Staff Needs for Expediting Commission Work

A recurrent theme throughout the LRC hearings and in discussions of the Commission has been criticism of the Commission for the length of time it has taken in certain situations in issuing its final orders. We believe that a number of the proposed changes in the law tend to streamline and speed up the work of the Commission. Nevertheless, we believe that the Commission should have sufficient budget for the needs of its members, of its Secretary and any other needed staff and for stenographic and other assistance, so that all hearings may be held as promptly as possible, more complete records may be kept and reproduced, and orders and opinions may issue in these situations as expeditiously as possible.

Other Duties for the Commission?

We believe that the Commission, in an advisory capacity and with additional staff and information, could do much to promote the consolidation of many existing incorporated areas which are too small to offer sufficient governmental services. We think that the Commission played a helpful role in the merger of Mound and Island Park and that more such mergers should be encouraged. If the Commission could devote a greater portion of its time and energies to this activity in the future, we believe it would be highly desirable, even if additional appropriations might be required. We also believe that the Commission has a role to play in making legislative recommendations in connection with matters of its concern. If it had the time and resources, the Commission might be in position to do a more detailed study of "urban townships," which it is required to review at least every ten years under the existing law.