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HOME RULE IN HAWAII

by

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HOME RULE IN HAWAII

Local government in Hawaii differs greatly from local government on the mainland United States. First, Hawaii has a highly centralized system of government, with the Territory administering many functions which on the mainland are handled by local government. Second, there are only the City and County of Honolulu, the four Outer Island counties, and a few special districts in the Territory; there are no organized cities or towns which are so numerous and important on the mainland. Finally, the territorial legislature enacts detailed laws controlling activities of specific counties; adoption of special legislation of this nature is prohibited in a number of states.

As understood on the mainland, "home rule" refers to the power of self-government conferred upon local units by state constitutional provision. Given this definition, many of the proposals advanced in Hawaii for a greater voice in determining local affairs cannot properly be labeled "home rule." Home rule in Hawaii, comparable to that which bears the name in mainland jurisdictions, would require an amendment to the Organic Act, Hawaii's counterpart of a state constitution.

Mainland experience reveals that home rule practices differ in many respects among the states--in some states home rule is available to all cities; in others, only the largest cities are eligible; in six states, constitutional provision has also been made for county home rule. Home rule powers may be granted in general or specific terms; in either case, it is the courts which determine their scope and a clear and consistent test for such determination is yet to be evolved. Common to all home rule jurisdictions is provision for local drafting and adoption of a charter.

Beside home rule, greater power of self-government may be given to local units by offering them a choice of optional "charters" for adoption, by providing for special statutes becoming effective only upon approval by the local governing body or by local referendum, and through broad statutory grants of power to local government units. To the extent that self-governing powers are obtained through legislative acts, "home rule" is not secure, as such grants of power may be summarily withdrawn or modified by the legislature. However, even in states with constitutional home rule provisions, there exist varying degrees of legislative control over local units. The interrelation of state-local affairs makes complete independence of any unit of government impossible.

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I. STATE-LOCAL RELATIONS

The relationship between the national government and the states theoretically is one between equals. The legal aspect of the relation between state and local governments markedly differs from this federal relationship--fundamentally, the state government is supreme. This often confuses many who are brought up in the tradition of democracy as being synonymous with local self-government. The additional fact that local government systems are not uniform throughout the country and that each state has developed its own system of state-local relations further adds to the confusion.

State Supremacy

Despite the strong American belief in local self-government, judicial doctrine has continued to recognize the supremacy of the state over its local governments.¹ The Supreme Court of Hawaii in 1930 in unmistakable terms upheld the power of the territorial government over its political subdivisions. To the contention that local units have the inherent right of local self-government,² the court said:

¹"In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will." Trenton v. New Jersey, 262 U.S. 182 (1923), p. 187.

See also Atkin v. Kansas, 191 U.S. 207 (1903), at p. 221, quoting with approval from Judge Dillon's famous opinion in City of Clinton v. Cedar Rapids and Missouri River R. R. Co., 24 Iowa 455 (1868), p. 475.

²The well-known opinion upholding the inherent right of local self-government was delivered by Judge Cooley in the case of People ex rel. Le Roy v. Hurlbut, 24 Mich. 44 (1871), and has had but very limited application. The Hawaii Supreme Court, in refuting it, quotes rather extensively from this decision in the McKenzie case, infra.

. . . How . . . can it be said that there was existent in Hawaii any such theory or principle or inherent right of local self-government? In our opinion there is not any such inherent right. Our antecedent history, the failure of Congress to recognize the existence of such a right and the positive action of Congress in making the authority of the Hawaiian legislature to create municipalities discretionary and not mandatory, all emphasize this.¹

The doctrine of state supremacy over local government is buttressed by the courts commonly holding that municipal powers are to be narrowly construed.

This is the "rule of strict construction," also known as "Dillon's Rule":

It is a general and undisputed proposition of law that a municipal corporation possesses, and can exercise, the following powers, and no others: first, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of a power is resolved by the courts against the corporation, and the power is denied.²

Types of State-Local Relations

The political and legal relation between the state and its subdivisions (especially its municipalities) can be described as falling into one of the following categories:

1. Legislative control by special laws. Under this system, which exists in Hawaii, the state legislature will pass special acts applicable to specific local governments. This makes it possible for the state legislatures to regulate local affairs in detail. It is against the abuses perpetrated under this system that local governments most complain, and the history of state-local relations in large part records the efforts of local

¹McKenzie v. Wilson, 31 Haw. 216 (1930), p. 227.

²John F. Dillon, Municipal Corporations, 1st ed. (1872), sec. 55; 5th ed. (1911), Vol. I, pp. 448-51; quoted by Anderson and Weidner, American City Government (rev. ed., New York: Henry Holt & Co., 1950), p. 213.

governments to prevent special legislation. The other methods of regulating state-local relations described below may be interpreted as the results of these efforts to seek alternatives to the method of special legislation.

In 1946, it was reported that 42 states had some form of constitutional prohibition against the enactment of special legislation.¹ To moderate the arbitrary nature of special legislation, the following procedures have been devised: (1) a number of states, following the leadership of Massachusetts, require that public notice be given before a special law is enacted; (2) New York's constitution requires the approval of local officials before special laws go into effect; (3) Illinois (with relation to Chicago) and Michigan subject special laws to referenda approval in the localities concerned; and (4) New Jersey's 1947 Constitutional Convention rejected typical home rule provisions and adopted a scheme permitting legislative enactment of special laws upon petition of the local governing body and subject to ratification by the local governing body or electors.²

2. Legislative control by general laws. A second method of state control over local units can be by general laws--i.e., laws uniformly applicable to local units within the state. Although this discourages favoritism of or discrimination against specific units, its inflexibility in treating all units alike, regardless of size and needs, is its inherent weakness.

3. Legislative control by laws applicable to classes of local units. This method falls somewhat between that of special legislation and of general laws. In essence, it calls for the classification of governments in

¹Council of State Governments, State-Local Relations (Chicago, 1946), pp. 149-150.

²New Jersey Constitution, Art. IV, sec. VII, par. 10 and 11, which also provides a rule of "liberal construction of constitutional and statutory provisions concerning municipal corporations and counties."

terms of broad population groupings, and allows state legislation that will regulate matters in terms of these "classes." Classification in its early history had many advocates. It was soon regarded as an inadequate arrangement for state-local relations. Some classificatory systems became so elaborate as to allow almost every city to be in a class of its own; furthermore, even when conscientiously attempted, it is difficult to maintain an adequate classification system for population per se is often not an adequate criterion.

4. Optional charters available to local units. Under the optional charter plan, the local units are given the choice of adopting one of the several forms of government--for municipalities, usually the mayor-council, commission, or council-manager type. These choices are sometimes limited to local units meeting minimum population requirements. General legislative acts can then be made applicable to the local unit in terms of the type of government that it maintains.

5. Home rule charters available to local units. As the term implies, this refers to the right of local units to a degree of autonomy in determining local affairs. It involves the transfer of some of the powers of the legislature to the local governing bodies. In essence, this transfer of powers takes the form of conferring upon the local units the right to draft, adopt, and amend their own charters of government by local action. Home rule generally has been applicable to cities, although county home rule is authorized in a few states.

Distinction is often made between "constitutional" home rule and "statutory" or "legislative" home rule. The latter refers to a situation where the grant of home rule power is made by legislative act; this is claimed to be unsatisfactory because such a grant is summarily revocable by the legislature,

the very agency against whom the fortresses of home rule are being created. Moreover, statutory home rule has been declared an unconstitutional delegation of legislative powers in Michigan and Wisconsin. Constitutional home rule, which is usually intended when references are made to home rule, means that the provisions for home rule are to be found in the state constitution, beyond the normal reach of state legislatures.

The above categories are not mutually exclusive, and, within each, wide variations are possible. A state may make home rule provisions applicable only to municipalities that meet certain population requirements; a combination of classification, optional charter and general law methods may exist in the same state.

Undoubtedly, home rule is the greatest departure from conventional state-local relations and is the system advocated by most local reform groups.¹

The following chapters discuss home rule as it applies to cities and to counties, and outline local charter drafting and adoption procedures. Both mainland city and county experience are pertinent to Hawaii, for in the absence of cities in the Territory, counties perform functions which on the mainland are divided between these two forms of local government. The final chapter of this report outlines the history of "home rule" movements in Hawaii.

¹Home rule has long been advocated by the National Municipal League and the American Municipal Association. The article on "State-Local Relations" in The Book of the States, 1954-55, states at pp. 47-8: "It is obvious that constitutional home rule still is a vital movement and is likely to spread to some additional states in the next few years."

II. MUNICIPAL HOME RULE

Broadly construed the term "municipal home rule" has reference to any power of self-government that may be conferred upon a city, whether the grant of such power be referable to statute or constitution. In American usage, however, the term has become associated with those powers that are vested in cities by constitutional provisions, and more especially provisions that extend to cities the authority to frame and adopt their charters.¹

As there are matters which demand state-wide uniformity, and as conditions vary from state to state, it is recognized that "home rule is . . . a relative matter. It calls for local self-government (i.e., freedom from legislative dependence and from legislative interference) in limited fields only."²

Prevalence of Municipal Home Rule

The first state constitutional municipal home rule provision was written into the Missouri Constitution in 1875.³ From Missouri, the idea spread to California, Washington, and Minnesota before 1900. At the present time, twenty-one states have home rule provisions of some kind in their constitutions.⁴

A mere listing of the states with constitutional provisions for home rule tends to overemphasize their significance. "Home rule does not convey equal

¹Howard Lee McBain, The Law and Practice of Municipal Home Rule (New York: Columbia University Press, 1916), p. v.

²Council of State Governments, State-Local Relations (Chicago, 1946), p. 163.

³Constitution of Missouri, 1875, Art IX, sec. 16. For an account of this development, see Thomas S. Barclay, The Movement for Municipal Home Rule in St. Louis (Columbia: University of Missouri Press, 1943).

⁴Arizona, California, Colorado, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, and Wisconsin. See "Existing Constitutional Provisions on Municipal Home Rule," in Jefferson B. Fordham, Model Constitutional Provisions for Municipal Home Rule (Chicago: American Municipal Association, 1953) at p. 25.

powers in every state."¹ In view of the differences in the home rule provisions to be found in the various state constitutions, the even greater differences that develop in the actual implementation of these provisions, and the varied interpretations of the state courts, a complete description of home rule and all of its ramifications would constitute a lengthy study.² However, brief examination of some of the major differences and attendant problems illustrates the broad range of home rule on the mainland.

Differences in Home Rule Provisions

Home rule provisions may be distinguished in terms of the following factors:

1. In terms of execution.³

(a) Permissive. A few state constitutional provisions merely authorize the legislature to pass a statute permitting home rule within the state. Such permissive provisions may be of little value as the legislature may choose not to exercise this authority. This was the case in Pennsylvania where, although a home rule provision was adopted in 1922, implementation was delayed until 1949 when the General Assembly passed legislation enabling first-class cities (Philadelphia only) to adopt home rule charters.

(b) Mandatory. Most constitutional home rule provisions are mandatory in that they require the legislature to enact supplementary legislation to make the basic home rule grant effective. These statutes

¹William Anderson and Edward Weidner, State and Local Government (New York: Henry Holt & Co., 1951), p. 139.

²Two classic detailed studies have been published: Howard Lee McBain, The Law and Practice of Municipal Home Rule (New York: Columbia University Press, 1916); and Joseph D. McGoldrick, Law and Practice of Municipal Home Rule, 1916-1930 (New York: Columbia University Press, 1933).

³Adapted from Rodney L. Mott, Home Rule for America's Cities (Chicago: American Municipal Association, 1949), pp. 17-18.

usually apply to the procedural aspects of home rule. Legislatures thus far have obeyed this constitutional mandate, although some of the statutory requirements have been thought to be unduly restrictive by the home rule advocates.

(c) Self-executing. A few state constitutions contain provisions of such scope and detail as to permit their political subdivisions to frame, adopt and amend their own charters without further or very little supplementary legislative action. They are thus termed "self-executing." The advantages for this method for securing home rule are obvious; disadvantages due to inflexibility may arise if the procedures written into the basic law of the state are too detailed and cumbersome.

2. In terms of availability. Home rule provisions are rarely made available to all units of local government. In most cases, they are drawn so as to apply only to cities, and, furthermore, only to cities of a certain size. The most restrictive provisions in this regard are those of Maryland, where only the city of Baltimore is included in the home rule provisions,¹ and of Louisiana, where home rule has been extended only to Baton Rouge and Shreveport. When the Pennsylvania legislature implemented its home rule provisions in 1949, they were made applicable to cities of the first class, viz., Philadelphia. The most embracing provisions make home rule available to "any city and village" (as in Minnesota) or "any incorporated city or town" (as in Utah). Several states require municipalities to exceed designated population minima--varying from the 2,000 stipulated in Colorado, Oklahoma, and West Virginia to 20,000 in the state of Washington--before

¹A proposed constitutional amendment for Maryland extending home rule to its incorporated cities, towns and villages will be voted upon on Nov. 2, 1954.

they may take advantage of the home rule provisions. Certain states provide for county home rule and this will be considered separately.¹

3. In terms of scope of home rule powers. Grants of home rule powers to cities are usually stated in very general terms. The key words of the original grant of home rule written into the Missouri Constitution read, "for its own government." Many states have subsequently adopted this language and it appears in the "Model State Constitution" recommended by the Committee on State Government of the National Municipal League.² Other common phrases used in designating the grant of home rule powers are: "all its local and municipal matters" (Colorado) or "enact and amend their municipal charters" (Oregon).

Beyond this broad grant of powers, there may be an enumeration of specific powers. In the absence of a listing of specific powers, the courts are called upon to a great degree to decide the exact scope of municipal powers. Indeed, it is through the determining of the extent of home rule powers that the courts have played a most vital role in influencing the actual operation of home rule in the various states.

The crucial question in any home rule state is: What is a municipal affair? The courts, following Dillon's rule of strict construction, have tended to regard municipal affairs rather narrowly, and, in some cases, not too consistently. A comprehensive survey of state-local relations reveals: "It is an astonishing fact that though the home rule movement is seventy years old, no definition of what may properly be called 'municipal affairs'

¹County home rule is discussed in the next chapter.

²National Municipal League, Model State Constitution (5th ed.; New York, 1948), Art. VIII, Sec. 801, at p. 15.

has been evolved."¹ What is solely a municipal function will probably vary from state to state and from time to time.

In light of the many difficulties encountered in home rule states over the interpretation of general grants of powers, it has been suggested that some enumeration of specific municipal powers be included. The following quotation well summarizes this point of view:

It is difficult . . . to separate state from local functions. A complete specific enumeration of powers to be exercised by home rule cities is therefore impossible. Nevertheless, it seems both possible and highly desirable that some specified powers be given to localities in addition to the general grant of authority over local affairs. Rather than leaving the entire field of home rule powers to the definition of the courts, there seems no valid reason why an enumeration of powers cannot be conferred upon cities in every home rule state. In the process of this enumeration, those which have been the cause of the greatest litigation in the past could be carefully considered. As a matter of public policy, they can be granted or denied to home rule localities.²

On the other hand, an enumeration of powers also has the unfortunate consequence of soon becoming out of date and possibly too restrictive.³ Although it may be true that under a system of enumerated powers the courts will not have as great a discretion as they possess under a general grant of powers, the courts will still be called upon to interpret the scope of the enumerated powers.⁴ The ever-increasing number of activities undertaken by

¹State-Local Relations, op. cit., p. 164.

²Ibid., pp. 171-72.

³Another study suggested: "It is desirable to make the grant of powers as broad as possible and to hold specific grants to a minimum." Rodney L. Mott, op. cit., p. 7.

⁴Mott (ibid.) comments: "If (specific powers are enumerated), the courts should be given a clear instruction to interpret these powers broadly and not construe them to deny other powers not expressly granted."

growing city governments can never be completely enumerated in terms of powers and functions; general language more in the form of broad categories of functions would appear necessary.

4. "Local Federalism." To remedy this comparative lack of local self-government even in home rule states, a major recommendation by Mott was to institute a system of local federalism.

Another way cities can be given adequate home rule powers is by reversing the judicial doctrine of municipal inferiority to the state. This can be done most completely by going one step beyond the traditional home rule provisions and adopting a system of Local Federalism.

Local federalism would involve a declaration that the residual powers of government rest with the cities and that the state has only such powers as are delegated to it.¹

5. Grant of substantive powers to municipalities. Still another method of regulating state-local relations so as to assure greater self-government to municipalities was suggested in a recent publication of the American Municipal Association. The proposal, made in the form of a model constitutional provision, would reverse the traditional pattern essentially by allowing home rule cities to exercise powers not specifically denied them by the legislature. In the words of the author, Jefferson B. Fordham:

The distinctive feature of the present draft (of the model constitutional provisions on home rule) is a constitutional grant of substantive powers, which is effective without the aid of enabling legislation but is not beyond legislative control. This reverses the traditional non-home rule pattern; the power is there unless clearly denied by positive

¹Mott, op. cit., p. 8; pp. 31-32; see also Mott, "Strengthening Home Rule," National Municipal Review, XXXIX, No. 4 (April, 1950), pp. 174-176.

enactment. The familiar home rule distinction between general and local affairs, a distinction which has defied reasonably predictable application because of its lack of a firm rational core, is laid aside.¹

Summary

It has been nearly 80 years since the first home rule provision appeared in the constitution of Missouri, but it has proven no panacea. Local government units are still seeking to establish a more satisfactory degree of local autonomy.

A study of Ohio's home rule practices concluded: "The experience of Ohio with municipal home rule has been a rather unhappy business."² Part of the blame is laid to the courts; as a recent appraisal of home rule in New York states: ". . . because of systematically narrow judicial interpretation these provisions

¹Jefferson B. Fordham, Model Constitutional Provisions for Municipal Home Rule (Chicago: American Municipal Association, 1953), p. 6. The suggested constitutional provision for home rule powers reads as follows (at p. 19):

A municipal corporation which adopts a home rule charter may exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute. This devolution of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

A home rule charter municipal corporation shall, in addition to its home rule powers and except as otherwise provided in its charter, have all the powers conferred by general law upon municipal corporations of its population class.

Charter provisions with respect to municipal executive, legislative and administrative structure, organization, personnel and procedure are of superior authority to statute, subject to the requirement that the members of a municipal legislative body be chosen by popular election, and except as to judicial review of administrative proceedings, which shall be subject to the superior authority of statute.

²Jefferson B. Fordham and Joe F. Asher, "Home Rule Powers in Theory and Practice," Ohio State Law Journal, IX, No. 1 (Winter, 1948), p. 70. The whole issue is devoted to an analysis of "Municipal Home Rule in Ohio."

(of home rule) must be recognized as having failed in their purpose. The fact is that the cities of New York have little, if any, more constitutional home rule today than they had a half century ago."¹

It has also been suggested that: ". . . the home rule movement was out of harmony with modern ideas about public administration, which stress flexibility and adaptability in governmental arrangements at the expense of fixed geographical patterns, with a view to maximum effectiveness in conducting the public business."²

Finally, we are reminded that the achieving of home rule is not essentially a matter of legal tactics. The attitudes of all concerned is at least partially responsible for the failure to achieve the goals of home rule.

Primarily, home rule is a matter of attitude; it cannot be achieved entirely by mandate of ink on paper or by the adoption of legalistic ritual. People can have local self-government only if they want it and are willing to work for it. They can be assisted in their efforts by a similar attitude on the part of legislators, local officials, and the courts. Unless legislators resist the temptation to deal with local matters and confine themselves to problems of state-wide concern, home rule can be only partially successful. If local officials generate an attitude of self-sufficiency among themselves, they can inspire confidence in their constituents and their legislators; and it follows that a vigorous handling of community affairs will diminish the compulsion for state action. The courts in their turn must develop a conception of the totality of the home rule problem and appraise their decisions in that light. Finally, a populace which understands the necessity for home rule can deter the legislature from undue interference with local affairs, stimulate local officials to fulfill their obligations under home rule, and encourage the courts' present trend of legal thinking in favor of greater local autonomy.³

¹W. Bernard Richland, "Constitutional City Home Rule in New York," Columbia Law Review, Vol. 54, No. 3 (March, 1954), p. 311.

²Jefferson B. Fordham, Local Government Law (Brooklyn: Foundation Press, 1949), p. 77.

³John P. Keith, City and County Home Rule in Texas (Austin: Institute of Public Affairs, University of Texas, 1951), p. 149.

III. COUNTY HOME RULE

Counties have been defined as "major and inclusive divisions of the state area for general state purposes."¹ As such, counties are found in all of the states, though they are designated as parishes in Louisiana, and they are not considered as separate units of government in Rhode Island because they are not organized to perform governmental functions. Despite the universality of counties, it should be cautioned that their organization and importance are not everywhere the same. The counties in the South tend to play a rather prominent role; in the New England states their functions are few. Furthermore, it should be remembered that counties within each state vary greatly in size, resources and degree of urbanization--factors that influence their organization and the scope of their services.

A distinction is sometimes made between cities as municipal corporations and counties as quasi-municipal corporations. This difference is often noted to emphasize the apparently different circumstances under which cities and counties have been created. Municipal corporations are formed voluntarily as a demand for governmental services grow, usually as a result of residential concentration; the county, on the other hand, is somewhat of an arbitrary and artificial creation of the state. This distinction is sometimes used to stress the fact that counties, more than cities, are to be utilized for the performance of state functions.

Prevalence of County Home Rule

Given the closer proximity of the county to the state, it is not surprising

¹William Anderson, The Units of Government in the United States (rev. ed.; Chicago, Public Administration Service, 1949), p. 15.

that the plea for county home rule has been far less widespread and insistent than that for municipal home rule. Only six states--California, Maryland, Ohio, Texas, Missouri and Washington--have constitutional provisions that grant a measure of home rule to their counties.¹ In 1952 it was reported that:

. . . In these six states some two hundred counties are accorded charter-making authority, but in only a dozen--ten in California and one each in Maryland and Missouri--have charters actually been adopted. A few other counties have drafted charters which were subsequently defeated by the local voters, but popular interest in home rule has not been generally widespread even in those counties where the privilege is available. Furthermore, such local interest as has been evident has been confined almost exclusively to populous counties of urban or suburban character.²

Scope of County Home Rule

A highly significant difference between county home rule and municipal home rule is the fact that the former is narrower in scope in that it normally extends only to matters of internal organization and structure and does not involve a grant of substantive powers over local affairs. This limitation "is perhaps not surprising when it is recalled that quasi-municipal corporations like the county, to a larger degree than municipal corporations proper, are considered to be mere subdivisions of the state, with functions confined for the most part to matters in which state interest is paramount. In any event, it is significant that county home rule is less extensive than municipal, not only in geographic application but also in embracing a narrower grant of authority."³

¹A number of states, notably New York, authorize optional forms of government to counties.

²Clyde F. Snider, "American County Government: A Mid-Century Review," American Political Science Review, XLVI, No. 1 (March, 1952), p. 69. An analysis of the lack of success with county home rule in Texas is to be found in John P. Keith, City and County Home Rule in Texas, op. cit., esp. pp. 100-110.

³Snider, ibid.

County Ills and Remedies

Counties on the whole have earned a reputation for poor government and sometimes are still referred to as the "dark continent of American politics."¹ Furthermore, some predicted that counties, caught in a twilight zone between expanding state governments and increasingly active city, town and village governments, may well die of atrophy. Others, including top government officials, have suggested a new grid of counties, mainly by consolidating existing counties into what they considered to be more self-sufficient and stable units. However, despite criticism and proposed remedies, counties have not diminished in number, and consolidations--although often theoretically rational--have been extremely rare.

If there has been any trend in county government operations in recent years, it has been to display a new vitality and an increase in scope of activities. The state government may have taken over some of the functions previously administered by counties (such as welfare), but in this day of increased governmental operations, county governments, too, have expanded. Counties are no longer considered as being on the road to oblivion, but rather are now subject to continuous scrutiny in order to make them function more effectively.

The poor performance of county governments on the mainland is laid to inefficient organization. The common fault with most counties, it is said, is the lack of a responsible chief executive. In many states this may be attributed to the state constitution which sets forth county organization in detail and frequently calls for an extremely long ballot, requiring the election of a host of officers, and thus diffusing responsibility. The major program of reform on the

¹H. S. Gilbertson, The County: The "Dark County" of American Politics, N.Y., National Short Ballot Organization, 1917.

county level now centers around the creation of a strong executive who will coordinate the activities of the county and contribute to administrative efficiency. Most of the specific proposals call for a shorter ballot, and either the election of a singular executive, usually designated a president, or the appointment of a county manager.

Proposals for the outright consolidation or regrouping of counties have now given way to an encouragement of "functional consolidation," i.e., that the existing counties cooperate (by the pooling of resources, including personnel and equipment) with other units of government in the performance of similar functions. Such cooperative action may be between a county and one or more neighboring counties or between a county and any of the towns, villages or cities located within its boundaries.

In its relation with the state governments, the counties no longer appear too concerned over the elusive grants of exclusive authority. Instead, efforts are being bent toward the establishment of such control and direction from the state as will enable counties to exercise a large degree of administrative responsibility and discretion within a framework of state supervision.

IV. CHARTER DRAFTING AND ADOPTION

In many ways, a charter is to a city or county what a constitution is to a state--the fundamental law regulating the powers, organization and procedures of government. A charter is "the written instrument authorized or granted by the state, together with all amendments and supplements thereto, by virtue of which the city is given its corporate existence, its powers, and a certain form of government."¹

The charter document, especially of home rule cities, can assume a number of forms and be of varying length. However, the essential features of most charters include:

1. Powers of the local government unit.
2. Organizational provisions, covering the basic form or type of government (i.e., mayor-council, council-manager, etc.) and the general procedures governing the exercise of power by the different branches and departments;
3. Administrative practices, such as the merit system, budgeting, central fiscal management and control, etc.
4. Popular control devices governing elections and any methods of direct legislation.²

A local government unit may obtain its charter from the legislature or through local formulation and adoption. The distinguishing characteristic of home rule is that it confers upon a locality the right to draft, adopt, and amend its own charter.³ The importance of charter drafting and adoption in home rule

¹William Anderson and Edward Weidner, American City Government (rev. ed.; New York: Henry Holt & Co., 1950), p. 204.

²Adapted from National Municipal League, A Guide for Charter Commissions (2nd ed.; New York, 1952), pp. 23-24. As the title implies, this is a most helpful guide for charter commissions; much of the material presented in this chapter is drawn from this pamphlet.

³Charles M. Kneier, City Government in the United States (rev. ed.; New York, Harper and Brothers, 1947), p. 85.

jurisdictions justifies a closer examination of the procedures involved.

Charter Drafting

Charter drafting procedures differ in some respects from state to state. In the great majority of the states, the drafting of a new charter, or the wholesale revision of an old one, involves the creation of a charter commission.¹ The initial step of calling for a charter commission can usually be taken in one of two ways: either by resolution of the city council or by petition signed by a stipulated percentage of the qualified voters of a municipal corporation. The question is then put to the voters at an election: "Shall there be a commission to draft a new city charter?" Generally, the voting for charter commission members takes place at the same election.² This saves time and expense, and, normally, controversy over the charter seldom manifests itself at this stage. At any rate, a negative vote on the first question automatically nullifies the election results for commission members.

The number of charter commission members to be elected and the method of their nomination will vary with local practices. Fifteen tends to be the most common size of commissions.³ The recent model constitutional provision endorsed by the National Municipal League recommends "not less than seven members" whereas the earlier draft stated nine. A small commission is favored by some students who are familiar with the operations of a charter commission.⁴

¹Recent model provisions also authorize the legislative body of a municipal corporation to propose by resolution the adoption, amendment, or repeal of a charter.

²In Minnesota, district judges appoint commission members.

³Thomas H. Reed, Revising a City Charter (New York: Governmental Research Association, 1947), p. 2.

⁴Ibid.

Candidates for commission positions may be nominated in the same manner as those for the regular elective offices. In a number of instances it has been felt more expedient to change nomination procedures, especially if the demand for a new or revised charter has been motivated by a desire to clean up "politics as usual." The earlier model draft of the National Municipal League recommended nomination by petition "signed by not less than one per centum of the qualified electors and filed with the election authorities at least thirty days before such election, except that the signatures of more than one thousand qualified electors shall not be required for the nomination of any candidate."¹ Due to the scope and the fundamental nature of the undertaking, as well as the frequent presence of the desire to "turn the rascals out," it has generally been recommended that candidates run without partisan labels with the requisite number of candidates receiving the largest number of votes in a single election being declared elected.²

Another question that can be raised regarding elections is whether the members should be elected at-large or by ward districts. Most states provide for at-large elections.

Once the charter commission has been formed, the important work begins. A charter commission has been described as "a distinctly American contribution to the art and practice of local government, . . ."³

¹National Municipal League, Model City Charter (rev. ed.; New York, 1941), sec. 2, p. xxviii.

²See National Municipal League, Model State Constitution, (rev. 1948), sec. 801. It is reported that in 1954, 60% of the cities over 5,000 had non-partisan local elections; The Municipal Year Book, 1954 (Chicago: International City Managers' Association), p. 75.

³A Guide for Charter Commissions, op. cit., p. 5.

. . . Such a body has a unique and important service to perform. Like a constitutional convention at the state or national level, it investigates the existing government and charter, studies the experience of cities elsewhere under other charters and forms of government, ascertains the best principles of municipal government to insert in a new charter, and then drafts and submits to the voters for their approval a new and presumably improved charter or amendments. Free from the necessity of engaging in actual government and party strife, it can turn its full attention to the improvement of governmental machinery. If its work is well done and forward-looking, and if the voters choose to adopt it, the commission may have a good influence for decades after its work is done.¹

Charter commissions do not, and should not, appear very frequently. Consequently, very few people are well versed in charter drafting and the men who are elected to charter commissions are likely to be little experienced therein. This is not necessarily a disadvantage. An old hand at charter drafting wisely observes:

The functioning of charter commissions is deeply affected by the fact that they are almost without exception composed of laymen to whom charter making is a novel avocation. Even the lawyers, and there are several of them on most commissions, are not much better off in this respect than their butcher and baker colleagues (sic.). Such members as have special competence for the task are often such busy people that they can give only limited attention to the work of the commission. This is not said by way of complaint. It is all as it should be. The charter commission should be a representative body in which are reflected the ideals and desires of the people. Municipal specialists frequently have distorted views on such things. What is needed in a charter commission is not technical skill but general intelligence and something of the common touch.²

Those experienced in charter drafting most strongly recommend the hiring of an expert consultant to provide the knowledge and technical skill necessary in formulating a good charter. Admittedly, experts in this field are hard to find. "Generally speaking, the best charter draftsmen are men who have made a special study of municipal government against the background of the study of politics,

¹A Guide for Charter Commissions, op. cit., p. 5.

²Thomas H. Reed, Revising a City Charter (New York: Governmental Research Association, 1947), p. 2.

government and public administration generally."¹

Once an expert is hired, it does not mean that the commission can abdicate its responsibility. As Reed succinctly puts it: "Genuine experts are entitled to great respect but even genuine experts should be kept in their place. That place is not the post of decision but of advice."²

The expert can serve the commission by performing some of the following functions:

1. Gathering, selecting and summarizing pertinent information.
2. Presenting a comprehensive view of local government as a whole and of comparable governments elsewhere which will provide a wholesome corrective of localized knowledge and prejudices that commission members may have.
3. Suggesting an organized way of handling the various steps of charter formulation, including the discussion of the substantive parts of the charter in an orderly and efficient manner.
4. Preparing the agenda and materials for discussion at meetings and participating in the discussion.
5. Making first drafts of sections and later the proposed draft of the complete integrated document.³

Charter Adoption

Many states require that charter commission members complete their work within a certain period of time.⁴ Where submission of the proposed charter for ratification by the qualified electorate is required, as in most home rule states,

¹A Guide for Charter Commissions, op. cit., p. 7.

²Reed, op. cit., p. 2.

³Adapted from A Guide for Charter Commissions, op. cit., p. 8.

⁴The National Municipal League's 1941 draft of model constitutional provisions stipulated one year. A random survey discloses the following time limitations for the charter commission's work: Arizona - 90 days; Nebraska - 4 months; Minnesota - 6 months; California and Missouri - 1 year.

the date for such election is usually left to the determination of the charter commission.

Public notice and publication of proposed changes as part of the ratification procedure raise problems. It is recognized that official notice of the proposals submitted is necessary and a variety of ways of accomplishing this have been employed. Some states require the time consuming and expensive, but often ineffectual, method of the publication of the entire proposals in full in several newspapers over several weeks. The model constitution recommends newspaper notification, at least thirty days before the election, to the effect that copies of the proposals are available upon request from the office of the city clerk.¹

Some states permit voters to exercise some preference or choice in voting on charter proposals. Accordingly, instead of blanket approval, it is possible in some states to submit any portion of the charter for separate vote, and to have a choice of alternative sections or provisions. Some states direct the regular legislative body of the local government to review the work of the charter commission, and such a body is authorized to suggest alternative provisions.

The size of the majority necessary to ratify charter proposals has been a major stumbling block in a great many instances. Some states require the almost impossible hurdle of the majority of "all the voters"; even the requirement of the majority of "the voters voting in the election" often turns out to be a formidable obstacle. Students of government prefer,² and most states impose, the

¹Model Constitutional Provisions . . ., op. cit., Sec. 8, p. 23. At the other extreme, California requires that, in cities over 50,000, printed copies, "in type of not less than 10 point," be sent to "each of the qualified electors."

²Mott, op. cit., p. 25; National Municipal League, Model State Constitution, 1948 ed., sec. 801.

simpler requirement of approval by a majority of the voters voting on the proposals. To the criticism of those who would label this "government by minority," a negative though effective answer is that government by a conscientious minority is better than government by apathy.

The work of the charter commission is not necessarily completed by meeting all of the legal requirements, short of submitting the charter to a vote. The best charter is of little value if it is not ratified. Ratification, which is normally in the form of approval at the polls, calls for a program of good public relations on the part of the commission or some other group charged with securing the adoption of the charter.

Public relations does not mean publicity bombardment, nor does it begin when the charter draft is completed. Dr. Charlton F. Chute, who acted as consultant to Philadelphia's successful charter commission, defines good public relations as "a function of two parts: (1) doing the right thing and (2) telling about it." "It would be fair," he adds, "to rate writing the charter at about 50 per cent of the job and building an attitude favorable toward adoption at about 50 per cent."¹

Consciously or unconsciously, public relations begin with the first meeting of the charter commission. The essence of a sound public relations program is to secure intelligent citizen participation throughout the charter making process. This participation can be encouraged and achieved in many ways. Well organized and open public hearings are not only useful for the receiving of ideas and suggestions but they also help to keep the public informed of charter proceedings. Use of the mass media of communication--the radio, newspapers and

¹Chute, "How to Get a New City Charter," National Municipal Review, XL, No. 8 (September, 1951), p. 403. This is an interesting account of a successful charter adoption campaign. A Guide for Charter Commissions (op. cit.) also emphasizes the importance of public relations, pp. 14-18.

television--will keep the general public aware of problems and progress. The commission may also make facilities and personnel available to handle forums and speeches before various organizations in the community. Schools, as part of their civics courses or citizenship education programs, may be especially encouraged to follow and discuss the progress of charter formulation. Special charter commission leaflets or reports may be issued from time to time. Upon completion of the charter draft, it has been found helpful and often very effective to issue simultaneously a simple and direct report to the "man on the street" telling him of the main features of the proposed charter.

If the electorate votes to approve the charter proposals, most states prescribe the formality of depositing a copy of the document with the secretary of state as a matter of record.

Review by state officials is found in a minority of the home rule states. California and Virginia provide that new charters and charter amendments obtain legislative approval; Michigan, Arizona and Oklahoma require review by the governor; West Virginia calls upon its attorney general to determine whether the charter provisions are consistent with the state constitution and laws. It is reported that these powers of review have not been abused¹--in fact have tended to be a formality--but the possibilities of abuse (the very evil against which home rule was instituted) present themselves. Furthermore, students are of the opinion that review by an official of the executive department serves little purpose as it would not be binding on the courts.² A legal "audit" of the final draft by disinterested, competent counsel has been suggested as a means by which charter commissions may avoid conflict with existing general laws.

¹Mott, op. cit., pp. 25-26.

²Ibid., p. 26.

Summary

Charter drafting by commission can be summarized as involving the following basic steps:

1. Call for a new charter or revision of the old, usually by petition of a certain percentage of the voters or by municipal council resolution.
2. Approval by the voters on the question: Shall a commission be chosen to frame a city charter?
3. Election of charter commission members, usually at the same election seeking to establish the commission.
4. Organization and work of the charter commission.
5. Submission of the charter proposals to the electorate for approval or rejection.

V. LOCAL GOVERNMENT IN HAWAII

Existing Local Government Structure

Should Hawaii be admitted to the Union, there will be no appreciable increase of local government units in the states. According to the Bureau of the Census enumeration of 1952, the Territory of Hawaii had but a total of 14 local government units.¹ Three are classified as counties--Hawaii, Maui and Kauai. The Territory has no organized "cities" but it is believed more appropriate to classify the city and county government of Honolulu as a "municipality." Aside from these four major units of local government, ten special districts are listed: the Hawaii Housing Authority, the Honolulu Urban Redevelopment Agency and eight soil conservation districts.²

For all practical purposes, local government in Hawaii is found only on the county level.³ A brief historical review of local government in Hawaii gives a clearer perspective from which to view this present system of government.

¹U.S. Department of Commerce, Bureau of the Census, Local Government Structure in the United States (Washington, D. C.: Government Printing Office, 1954), p. 87. In contrast, Minnesota reported the largest number of local government units with 9,025 (p. 46) and Rhode Island the smallest number with 881 (p. 70). The total number of local government units was 116,695, an average of 2,431 per state. See also U.S. Department of Commerce, Bureau of the Census, Governments in the United States in 1952 (Washington, D. C.: Government Printing Office, 1953).

²By 1954, the number of soil conservation districts in Hawaii had increased to thirteen.

³A pioneer study of Hawaiian territorial government states: "Counties in Hawaii are more exalted than such units in mainland United States. They are the only agencies of local government. There are no organized cities and towns within them. They have, therefore, the combined functions of county and city government." Robert M. C. Littler, The Governance of Hawaii (Stanford: Stanford University Press, 1929), p. 60.

Brief History of Local Government in Hawaii

It is recorded that the major Hawaiian islands at the time of their discovery by Captain Cook in 1778 were each governed separately by feudal rulers.¹ When Kamehameha I united the islands by conquest, he centralized power in the hands of the monarch. During the reign of Kamehameha III (1824-54) a constitutional monarchy was proclaimed, and the first laws relating to local government were adopted. A chief justice who assumed office shortly after Hawaii became a Territory records these developments:

. . . From 1851 to 1859, not only were the district road supervisors elected, but they were required to submit to the vote of the road-tax payers of their respective districts all questions of laying out new roads or closing old ones. By a law of May 21, 1841,² provision was made for the election of school committees by the male parents of townships, districts and villages. But, what is particularly interesting, an act of November 9, 1841, after reciting that many little evils existed in villages which the general laws could not correct, because the circumstances of one village differed from those of another, provided that the people of any village, township, district or state, might enact laws respecting roads, fences, animals and any other law not at variance with the laws of the kingdom nor on a subject of universal importance, and provided for the calling of meetings of the people for this purpose by various officers on the application of those who desired the law. Here was the whole theory and practice of local government, and the ordinances were to be enacted not by a board of supervisors but by an old-fashioned New England town meeting.³

¹For brief accounts of early Hawaiian local government, see: W. F. Frear, "Hawaiian Statute Law," Thirteenth Annual Report of the Hawaiian Historical Society (Honolulu, 1906), pp. 40-41; Ralph S. Kuykendall, "The Evolution of Hawaii's Government from a Feudal Despotism to its Present Form of Government," U.S. Congress, Senate, "Administration in Hawaii," Hearings before the Committee on Territories and Insular Affairs on S. 4309-S. 4312, S. 4314, S. 4315, and S. 4375, 72d Congress, 2d Sess. (Washington, D. C.: Government Printing Office, 1933), pp. 130-133; Shiku Ito Ogura, County Government in Hawaii (Hilo: Hawaii News Print Shop, 1935), pp. 1-11.

²School districts were originally established by law of October 15, 1840; the law reported here was a subsequent amendment. See Benjamin O. Wist, A Century of Public Education in Hawaii (Honolulu: Honolulu Star-Bulletin, 1940), P. 50.

³Frear, op. cit., pp. 40-41.

The local government units mentioned do not seem to have functioned with great vigor; school districts and "villages and townships" enjoyed but a comparatively short existence. The designation of "townships, districts and villages" should be qualified as they were not organized political units such as existed in New England but rather English translations of Hawaiian designations (kalana, ahupuaa, etc.) for land divisions that were inherited from the feudal period.

With the minor exceptions of these "villages and townships," school districts, and road districts, which existed but for limited periods, governmental operations in Hawaii have been highly centralized. When Hawaii moved from Monarchy through a Republic and assumed territorial status in 1900, there were no organized towns, no cities, nor any counties. This is noteworthy when one considers that Hawaii's political institutions were being materially shaped by men steeped not only in the American political tradition but predominantly in the New England tradition of strong local government.

The Organic Act of 1900 which conferred territorial status to Hawaii, contained the following section entitled "Town, City and County Government":

Sec. 56. That the legislature may create counties and town and city municipalities within the Territory of Hawaii and provide for the government thereof.¹

Perhaps the most important word in the above section is the word "may," which makes the creation of local government units in Hawaii, including counties,

¹Federal statutes prohibiting territories from enacting special laws concerning municipal corporations were superseded by this section; a later amendment to section 5 of the Organic Act made this explicit. Section 56 was amended in 1905 (33 Stat. 1035) by addition of the following: "and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislature of the Territory." This amendment did not confer new powers upon the territorial government but cleared up an apparent conflict between sections 56 and 80. See U.S. Congress, House of Representatives, "Election of Public Officials in Hawaii," Report of the Committee on Territories, 58th Congress, 3d Sess. (Washington, D. C.: Government Printing Office, 1905).

permissive instead of mandatory. The Senate originally had amended this section by substituting the mandatory "shall" for the permissive "may" in regard to the creation of counties, but in its final form, the word "may" was retained.¹

Although Hawaii became a Territory with no organized system of local government, the creation of local government units had been a live political issue in the 1880's and during the formation of the territorial government. The 1900 platforms of both major political parties of the time contained planks favoring the creation of such units. The Republican Party platform read: "We favor the speedy enactment of laws for the establishment of such county and municipal governments as may be necessary to bring the conduct of our local affairs into full accord with the theory of American institutions and the principles of home rule."²

During the first session of the Territorial Legislature in 1901, a special commission on county and municipal government introduced a bill providing for the creation of counties in the Territory. Mass meetings were held by citizens urging the passage of this bill. At one of these meeting, the following resolution was passed:

Mass meeting assembled by the citizens of the Territory of Hawaii held at Haimoeipo Square, April 24, 1901, in favor of the immediate passage of the county bill now before the Senate as expressing the will of the people; and as a remedy against centralized power.³

The county bill of 1901 was passed by both houses of the legislature but was pocket vetoed by Governor Sanford B. Dole. The governor later explained that: "The county bill was an impracticable bill; I would not have signed it if I had

¹U.S. Congress, Senate, "Hawaiian Investigation," Report of Subcommittee on Pacific Islands and Porto Rico, 57th Congress, 2d Sess. (Washington, D. C.: Government Printing Office, 1903) Part I, pp. 15, 16.

²"Hawaiian Investigation," op. cit., Part I, p. 16.

³Ogura, op. cit., p. 4.

had a hundred days; it was impracticable and unworkable. If it had come in earlier, and I had had time, I should have vetoed it."¹

According to the reports of the period, the county bill of 1901 was poorly drawn especially in terms of election and financial procedures. Furthermore, a technical point was raised to question the way in which it had passed third reading in the senate.²

In the latter part of 1902, a subcommittee of the United States Senate Committee on Pacific Islands and Porto Rico arrived in the islands to "investigate the general conditions of the islands of Hawaii, and the administration of the affairs thereof, . . ." The subcommittee's report consists of two large volumes, and it is apparent that committee members were concerned over the lack of local government in the Territory. The subcommittee reported:

Your committee was somewhat surprised at the general centralized character of the government of the Territory and the manner of conducting the business of the government in Hawaii. In very many respects is the organization of the Territory so dissimilar to that of any other of the organized Territories of the United States, and partakes so little in its organization and practice of what is generally understood to be a government republican in form and in practice, and has so many of the old elements of monarchy still prominent, both in its organization and practice, that it is somewhat difficult to determine--as they are so very slight--as to the extent and character of the changes in the form and practical operations of the government from those of the old monarchy.³

The subcommittee felt that the insular geography of the Territory was a "strong argument in favor of the establishment of local, county, city and town municipalities."⁴ The subcommittee also found "long and loud protest in the

¹"Hawaiian Investigation," op. cit., Part 1, p. 447.

²Ogura, op. cit., p. 4.

³"Hawaiian Investigation," op. cit., Part 1, p. 7.

⁴Ibid., p. 10.

different islands, especially in the islands other than Oahu," against the existing centralized system of government.¹

The subcommittee concluded its report with these strong words of action concerning the establishment of local government in the Territory:

It is believed by your committee that the prevailing sentiment of a large majority of the people of Hawaii favors legislation providing for the organization of municipal, county, city, and town organizations, either by the local or general government. However, it is now believed that the next local legislature of the Territory, which meets in February, 1903, will provide for this, and in that event there will be no necessity for Congressional action. Should such action fail, however, by virtue of an executive veto, as at the last session of the legislature, or otherwise, then your committee earnestly recommends an amendment to the organic act, providing directly for county and municipal organizations in the Territory of Hawaii, or making it imperative on the Territorial government to do it.²

The 1903 legislature promptly passed a bill creating counties and this was approved by the governor. The county bill went into effect on January 4, 1904, but after thirteen days of existence, it was declared unconstitutional by the Supreme Court of Hawaii as it embraced more than one subject.³

In 1905, the legislature enacted a county act⁴ by overriding a gubernatorial veto. This act was also taken to the Supreme Court of Hawaii to test its constitutionality, but was found valid,⁵ and county government went into effect in the Territory in July, 1905. With minor amendments, the county government pattern remains substantially as set forth in the county act of 1905.

¹"Hawaiian Investigation," op. cit., p. 12.

²Ibid., p. 20.

³Territory of Hawaii v. Supervisors of the County of Oahu, 15 Haw. 365 (1904); Dole v. Cooper, 15 Haw. 297 (1903).

⁴ Session Laws of Hawaii 1905, Act 39, amended by Act 54 of the same session.

⁵Castle v. Secretary of the Territory, 16 Haw. 769 (1905).

The most noteworthy amendment to the county act of 1905 was the conversion, in 1907, of the County of Oahu to the City and County of Honolulu.¹ A major consideration in this change was the greater urbanization found in the county due to the presence of the city of Honolulu. The act itself bearing the short title, "The Municipal Act," read: "Sec. 3. Said City and County shall be and is hereby created a municipal corporation. . . ." The executive officer of the city and county was designated "mayor" and additional specific powers were conferred upon the city and county.

Home Rule Movements in Hawaii

Movements for home rule in Hawaii have tended to take two forms:² (1) to make the existing counties, especially the city and county of Honolulu, more independent of the territorial government; and (2) to create smaller local units of government, such as cities and towns, within the existing counties.

1. Counties. In June, 1939, representatives of the four counties met in the offices of the mayor of Honolulu to protest the practices of the territorial legislature in adopting special legislation. The group decided to draft a resolution requesting that Congress pass an amendment to the Organic Act prohibiting special legislation. The draft recommended that the following provisions be added to Section 56:

. . . provided that . . . all laws relating to the affairs or government or to the moneys and property belonging to or under the control of . . . counties . . . shall be general laws which shall in terms and effect apply alike to all counties . . ., provided, however, that on message from the

¹Session Laws of Hawaii 1907, Act 118.

²Hawaii's campaign for statehood has frequently been waged under the banner of "home rule." This was especially so in the early '30's to combat Congressional proposals that would have permitted the appointment of a non-resident as governor of the Territory.

governor declaring that an emergency exists or on resolution of the board of supervisors of the particular county . . . interested or affected requesting special or local legislation, then such legislation may be enacted.¹

The board of supervisors of the city and county of Honolulu, however, did not feel that this proposed amendment would establish home rule, so it drafted an amendment of its own that provided for the local drafting and adoption of charters through charter commissions.

Both resolutions were to be channelled through Hawaii's Delegate to Congress for introduction in Congress, but such a bill did not make its appearance in Congress at that time.

Recent sessions have seen the introduction of home rule bills in the territorial legislature. In the 1949 session, House Joint Resolution No. 34 "Memorializing the Congress . . . to amend the Hawaiian Organic Act to provide for home rule for any county or city and county over 100,000 population" was introduced but subsequently filed. The intention of this bill was to establish "constitutional" home rule.

A bill in the 1953 session of the legislature--S.B. 261--to "provide home rule to all counties and the city and county of Honolulu" met more consideration but a similar fate.

An attempt to establish home rule in Hawaii by statutory grant may give rise to a legal question. The Hawaiian Organic Act states: "That the legislature may create counties . . . and provide for the government thereof . . ." (Sec. 56, emphasis added). In the absence of specific authorization contained in the Organic Act, the question may be raised whether or not the devolution of charter-making power upon a local government unit is an uncon-

¹The Honolulu Advertiser, June 20, 1939.

stitutional delegation of the legislature's power.¹ Although such a grant has been sustained in some states, "statutory" or "legislative home rule" has been declared unconstitutional in Michigan and Wisconsin.² It appears that the law on this subject remains unsettled. However, should the charter, after its drafting and ratification by the local electorate, be required to be submitted to the legislature for approval or rejection by ordinary bill or joint resolution, confirmation would automatically constitute the charter an act of the territorial legislature and eliminate any legal doubt.

Honolulu - Greater autonomy has been especially sought by the city and county of Honolulu, the most urbanized and by far the largest local unit of government in the Territory. This has usually taken the form of proposing revisions or amendments to the statutory "charter", and though most of these undertakings cannot truly be labeled home rule, they are indicative of such a desire and are worthy of review.

During the 1913 session of the legislature, the Senate passed a bill (S.B. 88) to submit the question of the need of charter amendment or revision to the voters of the city and county of Honolulu. The House "tabled" that bill on the ground that the small attendance at a public hearing on

¹For a discussion of this question, see Howard Lee McBain, "The Delegation of Legislative Power to Cities," Political Science Quarterly, XXXII (1917), pp. 276-295, and 391-411.

²Elliott v. City of Detroit, 121 Mich. 611, 84 N.W. 820 (1889); State ex rel. Mueller v. Thompson, 149 Wis. 488, 137 N.W. 21 (1912).

the same afforded no assurance that the people of the City and County desired a new charter."¹

In 1915, a bill was enacted² providing for a convention of sixty-four members, elected by wards, to draft a new charter for the city and county for submission at the next session of the legislature. The main object of charter revision at this time seemed to have been changes in the internal organization of the city and county government so as to promote efficiency and to prevent the rise of machine politics. The proposed charter appears to have been the center of many heated debates. It passed both houses of the legislature after much wrangling and many amendments, but was vetoed by the governor and this veto was sustained by the House. For two decades thereafter no legislation of this nature was adopted.

In 1937, the legislature provided for the creating of a charter revision commission for the city and county of Honolulu.³ The fifteen members of the commission were appointed by the mayor with the approval of the board of supervisors. Section 2 of the Act stated the commission's duties in the following terms:

The commission shall make a study and analysis of the existing governmental structure of the city and county of Honolulu for the purpose of securing such factual data as will enable it to draft, and the commission is hereby

¹Joint Committee of the Chamber of Commerce, Civic Federation, Commercial Club, Ad Club and Rotary Club, Report on the Matter of a New Charter for the City and County of Honolulu, 1917, p. 5. The House Special Committee composed of the Oahu delegation reported: "Your committee called a public hearing . . . , at which there were but three representatives of the people. We therefore have not the assurance of the people of the City and County of Honolulu that a new charter is desired by them, and would recommend that these bills (S.B. 88 and H.B. 202) be tabled." House Journal, 1913, p. 950.

²Session Laws of Hawaii 1915, Act 91.

³Session Laws of Hawaii 1937, Act 218.

directed to draft a proposed new charter, adapted to the requirements of such city and county and designed to provide for the people of such city and county a more efficient and economical form of government. Such charter shall set forth the structure of the city and county government and the manner in which it is to operate. The study of any subject relevant to the property, affairs or government of the city and county of Honolulu, or of the laws relating thereto, or of any matter or thing deemed by the commission to be pertinent thereto, shall be deemed within the scope of the commission's work hereunder.

The important clause as to the disposition of the proposed charter read:

Section 5. The proposed charter shall be submitted to the next regular session of the legislature, at which time the terms of office of the members of the commission shall expire.

No provision was made for submitting the charter to the electorate at a referendum.

The commission, after "approximately fifty meetings, as well as numerous subcommittee meetings on special subjects,"¹ reported as follows:

No radical changes are recommended, but many evolutionary improvements are desirable and are recommended in the report. On the whole the commission found that Honolulu has good government and good traditions of government, which is due to the high quality of the leaders of the city and county and the territory. The traditions and persons in government are always more significant than the form of government. "That government is best that is best administered."²

The Commission report concluded:

The charter revision commission is aware that it has had the opportunity to make far more sweeping recommendations for change than it has made. However, it is felt that the adoption of such proposals as the career service, a budget officer, efficiency bureau, and centralized purchasing,

¹1939 Charter Revision Commission Report, "The Legislation Proposed to the 1939 Session of the Legislature by the Charter Revision Commission of the City and County of Honolulu Pursuant to Act 218, Session Laws of Hawaii, 1937," mimeographed, p. 4.

²Ibid., p. 5.

as well as the clearer definition of legislative and administrative functions, will have far reaching effects and will require time to absorb and set in proper functioning.¹

The Charter Revision Commission's recommendations were introduced in the 1939 legislature (S.B. 42), and with amendments from both houses, enacted into law.² From the standpoint of home rule, the new provisions were not significant.

The reaction of the board of supervisors of Honolulu to the Charter Revision Commission's work was one of bitter disappointment bordering on disgust. The mayor had set the tone earlier when he submitted his recommendations in writing to the commission, in which he said:

. . . Should the legislature re-act favorably to your proposed charter, it will be after all but a legislative act, subject to repeal or emasculating amendments by subsequent legislatures. If Hawaii were a state, we would seek a constitutional amendment to secure municipal home rule, but, as things stand, the only means by which we can obtain home rule, with its incidental benefits of permanency and continuity, is by an amendment to the Organic Act. I suggest that this fact be borne in mind and that steps be taken in that direction.³

In the midst of the legislative debate on the merits of S.B. 42 which incorporated the recommendations of the Charter Revision Commission, the Board of Supervisors of Honolulu passed a resolution condemning the report of the commission. The resolution read in part:

. . . Whereas, the said legislature from time to time has mandated the city and county of Honolulu to execute special legislation, which, at times, is to the detriment of the said city-county of Honolulu; and

¹1939 Charter Revision Commission Report, op. cit., p. 25.

²Session Laws of Hawaii 1939, Act 242. Committee reports recommending amendments are to be found in Senate Journal, 1939, at p. 578, and House Journal, 1939, at p. 1591.

³"Report to the Charter Commission by George F. Wright, Mayor," dated January 27, 1938.

Whereas, the report of the charter commission of the Territory of Hawaii makes no mention of a charter for the city and county of Honolulu, but chooses to ignore the purpose for which they were appointed;

Now, therefore, let it be resolved that the city-county attorney is hereby directed to inform the mayor and the board of supervisors the best, most efficient and speediest method of securing a charter, similar to that of the city of San Francisco.¹

The mayor refused to sign the petition and his veto was not overridden by the board, although some supervisors suggested that "independent action" be taken to secure a new charter. Meanwhile, the territorial senate subpoenaed the members of the board of supervisors to appear before it to testify on S.B. 42, but, on the whole, the legislature adopted the modifications recommended by the Charter Revision Commission. A few months later, the Honolulu board of supervisors passed a resolution requesting that Congress amend the Organic Act by providing for the local drafting and adoption of charters.²

Charter revision bills for the City and County of Honolulu have been repeatedly introduced in the legislature. During the 1953 regular session, four such bills were introduced but none passed.³ From the standpoint of home rule, it is significant to note that these bills, all quite similar, would have:

1. Created a twenty-one member commission appointed by the Governor.
2. Specified duties identical to those given the 1939 commission except that the words "representative form of a government" and that the charter shall set forth "the powers of the city and county in respect to municipal and county affairs" were added.

¹The Honolulu Advertiser and The Honolulu Star-Bulletin, March 1, 1939.

²See page 34.

³S.B. 254 and H.B. 360, H.B. 627, and H.B. 1058 of the 1953 Legislature.

3. Granted authority to the board of supervisors to review the draft of the charter and to propose alternative provisions.
4. Submitted the proposed charter for approval by voters of the city and county; upon approval to be submitted to the legislature for ratification.
5. Appointed a new charter commission in the event that the proposed charter of the original commission "fails to become the organic law of the city and county."

2. Towns, districts, etc. The desire of areas within counties for home rule is difficult to document as it has not received official recognition in the territorial legislature or by boards of supervisors.

During the Hawaii State Constitutional Convention of 1950, the island of Lanai, part of the county of Maui, was active in attempting to secure county status for itself and issued a mimeographed pamphlet entitled, "Lanai's Case for County Status and Voice in the Legislature." More recently, voices have been raised in the populous concentrations on the island of Oahu located away from the city of Honolulu (notably in Wahiawa and Lanikai-Kailua) to the effect that they should establish their own local governments to manage local affairs. The territorial legislature at the present time under section 56 of the Organic Act, has the authority to create towns, townships and villages but apparently has never seriously considered the possibilities of such a local government pattern.

It appears that some of those who are disturbed over the lack of home rule within their counties seek no more than the representation of their particular districts on the county board of supervisors. Such a form of district representation was prescribed for all the counties in the original county act of 1905.¹

¹Session Laws of Hawaii 1905, Act 39, sec. 12a.

For Oahu, the county act of 1905 provided that representation on the seven-member board of supervisors should be 3 from the district of Honolulu, 1 from the district of Ewa, 1 from the districts of Waianae and Waialua, 1 from the districts of Koolauloa and Koolaupoko, and 1 at large.¹ When the County of Oahu was changed to the City and County of Honolulu, members of the board of supervisors came to be elected at large, as they remain to this day.²

At the time of the 1907 change, the house did consider the continuance of district representation prescribed in the county act of 1905³ but no reason for the change to election at large is noted in the legislative journals of that session. Such reasons did come to the fore during the stormy session of 1917 when a Honolulu charter revision was at issue. Certain prominent community groups favored the election of three Honolulu supervisors from the fourth and three from the fifth representative districts, and this was incorporated into the charter revision bill which was sent to the governor. The governor vetoed the bill, for reasons that did not involve the form of representation, and his veto was sustained. But in the debate over whether supervisors should be elected at large or by districts, a senator is reported by the press to have argued against the proposed district representation in the following terms:

¹A senate amendment to the county bill provided for 4 supervisors from Honolulu and none at large; see Senate Journal, 1905, p. 790. Different proposals for the apportionment of the Oahu board of supervisors were also entertained on the floor of the house, though no debate on these proposals is recorded; House Journal, 1905, p. 465.

²Session Laws of Hawaii 1907, Act 118, sec. 24.

³House Journal, 1907, p. 1304.

The ward, or district, system, . . . had been tried out here and elsewhere. Experience showed it everywhere the same and everywhere bad. It always resulted in factional politics. In the unique conditions obtaining here, . . . it would precipitate racial conflict, drawing a sharp and dangerous line between the fourth and fifth districts, the haole versus the Hawaiian.

No Hawaiian or Portugese could expect a chance in the fourth and, knowing that, they would see to it that no haole could expect a chance in the fifth. If the senate voted for the amendment (to elect supervisors by districts), it would be overriding the unanimous recommendations of the press, the chief justice and the charter convention. It would be forcing the mayor to play politics with his board. It bound (sic.) him to side with the Democrats from one district or the Republicans from another. It would result in pork barrel politics, every member voting and working for his own district, and trading favors with the members from the other district.¹

In 1911, the territorial legislature amended the county act and prescribed elections at large for the Maui County supervisors.² This was accomplished over the protest of the Maui board of supervisors. The senate committee report, approving the change, stated:

. . . The present method of electing members of the board is distinctly objectionable, it being the old "ward" system, which history as well as experience has taught us that it (sic.) is the worst kind of government, in that it encourages all manner of irregularities.³

An interesting development concerning the composition of the Maui board of supervisors occurred in the 1953 session of the legislature. By the terms of Act 10, the number of board members was increased from seven to nine with the proviso that at least one member must be a resident elector of the island of Molokai and another of Lanai, although all supervisors are to be elected at large. The senate committee recommending passage of the measure reported:

¹The Pacific Commercial Advertiser, April 15, 1917.

²Session Laws of Hawaii 1911, Act 149.

³Senate Journal, 1911, p. 867.

The County of Maui consists of three inhabited islands, and on two of those islands there has been a feeling, from time to time, that because of their small population in contrast to the larger population of the Island of Maui, their interests have been overlooked.

The purpose of this bill is to rectify that situation, without giving control to the smaller units of the county.¹

For the county of Hawaii, which is geographically the largest, the change from the old system² to its present form of three supervisors each from its two representative districts and one at large took place in 1913. In recommending the change, the senate committee reported:

. . . From the inception of county government up to the present time, supervisors have been known to frequently show a tendency to be partial and are often prone to be selfish. Each tries to outdo the other in securing appropriations and patronage for his district. Very often a compact is formed between supervisors, and needed improvements are neglected.

Under the proposed method, members would be compelled to at least look after the whole section of the country from which they are elected.³

It was not until 1929 that Kauai finally joined the rest of the counties in prescribing elections at large for its supervisors. The senate committee report recommended this change for the same general reason: ". . . a supervisor elected at large by the county is usually more free to consider impartially the needs of the entire county."⁴ But interestingly, Kauai's change to elections at large had to be enacted over the governor's veto. In a veto

¹Senate Journal, 1953, p. 138.

²Section 12a of the County Act of 1905 apportioned the seven seats on the Hawaii County board of supervisors in the following manner: 1 from the districts of North and South Kohala, 1 from the districts of North and South Kona, 1 from the district of Kau, 1 from the district of Puna, 1 from the district of Hamakua, and 2 from the districts of North and South Hilo.

³Senate Journal, 1913, p. 979.

⁴Senate Journal, 1929, pp. 699-700.

message of interest to advocates of stronger local government, the governor said:

It appears that the Bill now under consideration contemplates changing the Organic Act of the County of Kauai, without general hearing being given to the people of that county. . . . Such action in my opinion is not in keeping with fundamental principles of local self-government.¹

Thus, today, all the counties of Hawaii have shifted from district representation on their boards of supervisors to at-large-elections or modified district representation systems. Honolulu and Kauai elect all of their supervisors at large while Hawaii elects three each from its two large representative districts, and Maui, though electing all at large, requires that the islands of Molokai and Lanai each be represented on the board by at least one resident member.

The Territory's experience has brought to the fore some of the disadvantages inherent in a district or ward representation system. The main criticism raised is that district representatives have a tendency to "take care of" their own districts at the expense of the welfare of the whole, usually by making "deals" with other district representatives who also wish to satisfy selfish localized interests. The major disadvantage of at-large-elections, especially over a large and diversified area, is that special and localized but legitimate needs may be overlooked by supervisors more impressed by the requests of the heavily populated areas in the counties, wherein also lie the voting strength of the county.

¹Senate Journal, 1929, p. 1149; also House Journal, 1929, pp. 1403-04.

Home Rule and the Proposed State Constitution

An opportunity to consider home rule in its most fundamental terms presented itself to the citizens of Hawaii in 1950 when a constitutional convention was called to draft a constitution for the state of Hawaii. In its final draft form, as approved by the electorate of the Territory, the proposed Hawaii state constitutional provision on local government¹ can be classified as one conveying county and municipal home rule of a non-self executing nature. The pertinent section reads: "Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be prescribed by law." To a large extent, the actual operation of effective home rule in Hawaii will depend on the actions of the legislature, as it does today under the Organic Act.² This is not to say that the pattern of local government will not change under statehood. The vague but key words which constitute the essence of home rule--"shall have power to frame and adopt a charter for its own self-government"--have been inserted into the proposed constitution. Implementation of these words, which can be most restrictive, must still come from the legislature. But the very fact that key words of home rule were written into the constitution may be taken as an indication of a gain for those who favor stronger local government in Hawaii. In the final analysis, legislative action setting the extent of home rule and enabling the actual exercise of home rule will depend largely upon the attitude and actions of the citizens concerned.

¹The Constitution of the State of Hawaii, Art. VII, Sec. 2.

²A recent newspaper article discloses that present Honolulu City and County officials "doubt that statehood status for the Territory will bring about . . . a greater measure of home rule . . ." They support this view by pointing to the record of the legislature: "The legislatures of the last 50 years have not relaxed their control over local government. In fact, they have gradually centralized more of it in the territorial government." The Honolulu Advertiser, March 7, 7, 1954.

VI. POSTSCRIPT: CREATION OF A CHARTER COMMISSION FOR HONOLULU.

Act 225 of the 1955 Legislature authorized the city and county of Honolulu to create a nine-member commission to formulate a new charter. In February 1956 Mayor Neal Blaisdell appointed the following commission, which was then approved by the Board of Supervisors: J. Ballard Atherton, Hawaiian Telephone Co., chairman; Thomas D. Murphy, University of Hawaii professor; Suyeki Okumura, attorney; Allan J. McGuire, Advertiser Publishing Co., treasurer; Raymond Y. C. Ho, attorney; Robert G. Dodge, attorney; Mrs. Eureka Forbes, teacher; William F. Quinn, attorney; and A. S. Reile, labor representative.

The 1956 budget of Honolulu allots \$11,880 to the commission for staff salaries and expenses; members serve without compensation. The commission is empowered to hold public hearings, issue subpoenas, administer oaths, inspect governmental records, and to receive assistance, without extra compensation, from any city and county officer or employee.

Following a study of the existing governmental structure, the commission is charged with drafting a proposed new charter designed to provide "a more efficient, economical and representative form of government" for the city and county.

When completed, the proposed charter will first be submitted to the Board of Supervisors, which may propose alternative sections to the document. Not less than forty-five days before the next general election, the charter and any alternative sections must be published in a local newspaper. At the general election, the charter and alternatives will be submitted to the city and county electorate. If the document receives approval by a majority of persons voting on it, it is to be submitted to the next session of the territorial legislature for final ratification.

Provision is made in Act 225 for the appointment and functioning of a succeeding charter commission, should the first proposed charter fail to become law.