

# THE STATES AND URBAN AREAS

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The states will play a crucial and positive role in urban areas in the next decade. The thrusts that have strained our federal system at either end—direct national action on the one side and local home rule on the other—will be redressed as the states increasingly become full partners in urban development. Such redress is already underway.

This paper will examine (1) a number of factors propelling the states into responding to urban needs, (2) their unique powers and place in the federal system permitting them to act, and (3) just what the states are doing and will do with these powers to meet urban needs.

## I

### WHY THE STATES WILL ACT

Why is the states' urban role going to expand to an extent that it has not in the past? There are at least four reasons:

- (1) the increasing urbanization of state populations in every region in the country;
- (2) the Supreme Court's decisions on reapportionment of both houses of state legislatures, and the rapid implementation of the Court's decisions;
- (3) the incentives and support to state action that stem from federal and local efforts to meet urban citizens' needs; and finally,
- (4) the increasing recognition of the need for reforming the current pattern of "jurisdictional fallout," coupled with restrictions on local powers, that characterize our urban areas.

We will examine these forces affecting state government in more detail. But let us make it plain that this is not a "states' rights" article. As California's Governor Edmund Brown has effectively put it,<sup>1</sup>

Even Macy's isn't local any more, and neither are the problems with which government in this decade must deal. We need a central government powerful enough to perform the legitimate and necessary tasks of government on a national scale—to protect civil rights in every form and in every place and to regulate big industry and big labor—and with the financial resources for medical care for the elderly, abolition of poverty, and increased help for schools.

The growth of new federal programs benefiting urban areas and national leadership in urban affairs will inevitably continue. Increased state action does not

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<sup>1</sup> Brown, *How to Put the States Back in Business*, Harper's Magazine, Sept. 1964, p. 100.

place the states and the national government in competition to surpass each other in effort and expenditure. Rather, we are dealing here with an examination of why and how the states will hold up their end of our shared system of collaboration with federal and local governments in meeting the needs of the people in urban areas. First, why will the states act?

#### A. Urbanization

We are an urban nation and are becoming more so at an increasing rate. The 1960 Census of Population found nearly two-thirds of the entire population of the United States residing within metropolitan areas—112.9 million persons of the nationwide total of 179.3 million. The 212 areas recognized as “metropolitan” (a county containing a city of over 50,000 population and contiguous counties socially and economically related to the central city) in 1960 accounted for eighty-four per cent of all the increase in the nation’s population during the 1950-60 decade. These standard metropolitan statistical areas (SMSA) account for more than two-thirds of the total population in seventeen of the fifty states; for one-half to two-thirds in another nine states. SMSAs today are found in forty-seven states and the District of Columbia. The only states that do not have at least part of such an area are Alaska, Vermont, and Wyoming.

If the Census Bureau’s definition of “urban population” (people living in communities of 2,500 or more) is used, thirty-nine of the fifty states today are more than fifty per cent urban. In 1910 only thirteen states could be so classified. The significance of this in politics—that is, who gets what, how, when, and why—is evident. Governors are elected state-wide. Predictably, the governors in these thirty-nine states are the urban residents’ friends. The governor is dependent upon them for nomination and election. The record of governors, aspiring to the Presidency, in meeting their urban residents’ needs is impressive and instructive. Few state political parties today can ignore urban needs and be successful at the polls. Suburban-rural coalitions are likely to be fragile and temporary as the suburbs begin to look more like the cities and face many of the same problems as the cities. Suburban needs for state as well as federal assistance for transportation, planning, water supply and sewage disposal, air pollution control, hospitals, and education are as real as those of the cities.

#### B. State Reapportionment

One of the most significant developments in the aftermath of *Baker v. Carr*<sup>2</sup> and the June 1964 decisions mandating population as the basis of apportionment in both houses has been the extent of state activity and the number of reapportionments actually accomplished or in process. Although the decisions have not gone unchallenged, the states have proceeded to act to maintain the initiative in determining

<sup>2</sup> 369 U.S. 186 (1962).

how the court standards shall be applied in individual states. There have been court cases—federal or state—in at least ninety per cent of the states. Reapportionment has been accomplished by state legislative action in a dozen states and by court action in three more. In half of the remaining states, legislatures are under court order to reapportion.<sup>3</sup>

It is too early to predict what the ultimate impact of reapportioned state legislatures will be on the legislative product. Still, some generalizations are already warranted. Where state reapportionment has been accomplished since the Supreme Court decisions by legislative action, voter action, or by the courts, greater representation has been given to "urban"—especially suburban—areas. As the urbanization of the country continues it will be reflected in state legislative representation. This will predictably result in more state attention being given to the general needs of those who live in cities, suburbs, towns, and urban counties.

### C. Competition and Incentives from Federal and Local Governments

It has been predicted that federal agencies will increasingly establish direct operating ties with the cities and decreasingly work with cities through the states. There is some indication of this. The 1964 Air Pollution Program broke a long tradition of the Public Health Service by making grants directly to cities. The Economic Opportunity Act of 1964 (the Anti-Poverty Program) as proposed by the Administration provided for direct grants to local private and public recipients as well as to states. Congress, however, in enacting the legislation, gave the governor the veto power over all community action programs and manpower training projects. The President's proposal for a billion-and-a-half dollar program of aid to education provides essentially for a system of federal grants to local school districts with low-income residents. Most of the grant and loan programs of the Housing and Home Finance Agency are (with state acquiescence) direct federal-local activities.

On the other hand, most of the other major federal urban development programs provide for direct administration by state agencies or approval of local projects as part of a state plan.

Most federal grant programs, and the number increases each year (eight major new grant-in-aid programs enacted by Congress in 1963 and nine more in 1964),<sup>4</sup> strengthen rather than weaken the states' role in urban development. Federal bureaucrats create their state as well as their local counterparts. The late Morton Grodzins' culinary simile of the marble cake rather than the three-layer cake to describe the interdependency of our federal system continues to be relevant:<sup>5</sup>

<sup>3</sup> For additional details regarding these developments, see COUNCIL OF STATE GOVERNMENTS, *LEGISLATIVE REAPPORTIONMENT IN THE STATES* (1964); *id.*, *STATE LEGISLATIVE REAPPORTIONMENT—BACKGROUND AND CURRENT DEVELOPMENTS* (1964), and current supplements, the latest of which is *LEGISLATIVE REAPPORTIONMENT: A SUMMARY OF STATE ACTION*, JUNE 15, 1964-JAN. 10, 1965 (1965).

<sup>4</sup> ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *SIXTH ANN. REP.* 2-3 (1965).

<sup>5</sup> Grodzins, *The Federal System*, in *GOALS FOR AMERICANS*, REPORT OF THE PRESIDENT'S COMMISSION ON NATIONAL GOALS 265 (1960).

As colors are mixed in the marble cake, so functions are mixed in the American federal system. . . . Even in the absence of joint financing, Federal-State-local collaboration is the characteristic mode of action. . . . From abattoirs and accounting through zoning and zoo administration, any governmental activity is almost certain to involve the influence, if not the formal administration, of all three planes of the federal system.

Federal expansion means state expansion, and state governments are still the pivotal level. In the fields of education, health, hospitals, highway construction, recreation, and other urban services, state (even excluding local) expenditures far exceed the federal. Thus, the President's aid to education proposal would bring total federal education expenditures to about \$3.5 billion. State expenditures for education in 1963 totaled \$11.9 billion.

Federal aid stimulates the states to act and to act with higher performance standards than they might otherwise provide. These federal grants help create opportunities for state action and better match legitimate public service needs with state tax capacity. State grants to local governments have a similar effect—stimulating local government action, achieving higher standards of performance, and equalizing local economic resources.

Accompanying the increasing use of federal grants and their stimulating effect on state activities is their possible distorting effect on the allocation of available resources among programs. Developing approaches to their use that will preserve the positive effects while minimizing possible program distortions will tax the ingenuity of legislators and administrators.

#### D. Overdue Reforms in Local Government Structure and Powers

Governmental structure in urban areas has become so complex, so fragmented, so overlapping, that the states, albeit belatedly, are playing a greater role. Only twenty per cent of all local governments are located in metropolitan areas, but the average number per standard metropolitan statistical area is eighty-seven, ranging from twenty-four for SMSAs of less than 100,000 population up to 301 for SMSAs of a million or more. The Chicago metropolitan area leads the nation with 1,060 local governments.

The 1962 Census of Governments revealed that, contrary to the national trend, the total number of local governments in SMSAs has increased by three per cent since 1957. Metropolitan areas are leading the nation in municipal incorporations and establishment of special districts, and lagging in reduction of school districts. Metropolitan areas, with twenty-three per cent of the nation's municipalities, contain all cities of 50,000 or more and over half of those with 25,000-50,000 population. Yet half the municipalities within SMSAs serve fewer than 25,000 people each and twenty-five per cent of SMSA populations live outside municipalities. In 1960, 133 metropolitan areas consisted of a single county each. By 1963 there were only 111 single county metropolitan areas.

As we shall see in more detail below, states are already striking back at the problem of the proliferation of local governments with legislation to establish rigorous standards to control the creation of new municipalities, regulate and provide for dissolution of special districts, grant urban powers to counties, provide a range of other permissive reorganization powers, provide urban services directly, and resolve disputes among local governments.

## II

### THE POWER TO ACT

Granted that the states have ample reason to respond to urban needs, how can they play a crucial role? What exceptional powers do they have (or share with the federal government) that will permit them to make a constructive contribution to the welfare of our urban populations? These major state endowments of power are four in number: adequacy of geographic jurisdiction, legal and administrative ability to exercise direct action and leadership, tax and revenue resources, and pre-dominance over local government organization and powers.

#### A. Geographic Adequacy

Some urban functions by their very nature dictate the area that is adequate for effective performance. Transit lines and highways need to cross jurisdictional boundaries at will so that bridges will not be halted in mid-stream and six-lane highways will not feed into country lanes. Air pollution is no respecter of legal boundaries, and its effects can only be mitigated by large area action.

Increasingly, metropolitan areas will reach out for water resources far beyond their boundaries. The states' greater geographical areas and more diversified water resources often make them a more logical unit than the metropolitan area for comprehensive planning, allocation, and development on the basis of watersheds, drainage basins, and river basins.

By the year 2000, Megalopolis will be a real phenomenon in intergovernmental relations and a factor in the administration of urban services. The fast-growing East Coast "super-city" stretching from Boston to Norfolk and the West Coast area between San Francisco and San Diego will appear, in another forty years, as continuous urbanized places.

Although the state's jurisdiction is not large enough to provide a viable solution in all cases, it offers an attractive alternative in many instances as fewer and fewer problems of transportation, outdoor recreation, education, public welfare, and industrial development, and aspects of public health can be handled adequately on a purely local basis. There has been occasional talk over the years of dividing the country according to "natural" regional boundaries, but logical service areas for different functions vary and there has been no agreement among the various func-

tional specialists examining this question as to just what these boundaries should be, anymore than federal agencies can, or should, agree on common regional office boundaries. Nor have these proposals been seriously considered. The fact is that the states are, today, established regional forms of government.

### B. Authority to Take Direct Action

There are few federal constitutional inhibitions to state action. The national government has not seized power from the states, there is no loss of state ability to act, nor have citizens lost power over their state's destiny. Such constitutional restrictions as do exist "are quite similar in their admonitions to the Nation and to the States, and consequently under the philosophy of these decisions exert no major thrust on the working division of labor and authority between them one way or the other."<sup>6</sup>

The number of governmental services and activities that rest primarily with the states rather than the federal government is substantial. These include the great police powers of health, safety, and welfare, schools (even with federal grants), intrastate regulation, taxes, and a great range of municipal services. The variables in determining the state role in urban affairs are not legal powers but rather political and administrative ability, vision, courage, and initiative.

### C. Strong Tax and Revenue Power

State constitutional and statutory provisions themselves establish the basic patterns for and set the limits on state and local tax systems. The state has a major responsibility to see that a sound basic tax structure is made available for local governments and that it is well administered. The state is the only functional unit of government that can bring its resources to bear on all the units of government within its boundaries. The state is responsible and concerns itself directly and indirectly, through overt decisions or inadvertent "absent-mindedness," with the distribution of financial resources.

Although resources needed to meet the social and economic problems of our metropolitan areas are, in large part, present within the metropolitan areas themselves, these resources, being unevenly distributed, are not necessarily available to those parts of the area most in need. Furthermore, these problems will not be solved simply by transferring funds and functions among jurisdictions in metropolitan areas, though in many situations such adjustments will help. State and federal governments have a crucial role to play in better matching capacity with need wherever that need exists.

The record of response to increasing responsibilities is impressive as state government expenditures continue to increase at a fairly consistent ten per cent rate, rising

<sup>6</sup> U.S. COMMISSION ON INTERGOVERNMENTAL RELATIONS, A REPORT TO THE PRESIDENT FOR TRANSMITTAL TO CONGRESS 30 (1955).

from \$15.8 billion in 1952, to \$36.4 billion in 1962, and \$39.6 billion in 1963. New or added taxes were recommended by governors to about half of the state legislatures meeting in 1965.

#### D. Control Over Local Government Organization and Powers

Although the tenth amendment to the Constitution means less than many people might have thought, the state does retain the residual power under our federal system. Each local government in the United States enjoys only that authority and autonomy granted it by state constitutions and statutory action. To the extent that local governments (legally, if not as a matter of practical politics) are entirely dependent upon the will of the state, centralized power exists. The classic "rule" on state-local relations as expounded by Justice Dillon, unless otherwise provided in state constitutions, is accepted as basic legal doctrine:<sup>7</sup> "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control."

This legal "supremacy" gives the state the authority to (a) enable local governments to spend money, raise funds, and acquire land for urban development purposes, (b) permit these governments to collaborate, join together through cooperative agreements, or consolidate the administration of needed services, (c) directly regulate and administer local urban services that have area- or state-wide implications, and (d) resolve disputes among local governments in metropolitan areas. Such authority is both a responsibility and an opportunity to provide a workable pattern of local government and administration in metropolitan areas.

### III

#### THE STATES ACT

We have traced some of the factors propelling the states into becoming an increasingly significant level of government in urban affairs, and the powers at their disposal permitting them to do so. Now, let us turn, in the remainder of the paper, to the crucial question of just what use the states are currently making of these great powers of geographic coverage, legal authority, taxation, and control of local government. This description of what the states are doing is limited to current and precedent-making examples, rather than providing full coverage.

#### A. Geographic Jurisdiction

The advantages accruing to states because of their geographic jurisdiction can be illustrated by a number of state programs for urban areas, including planning and natural resource programs. States have chosen to act directly, for example, in the

<sup>7</sup> *City of Clinton v. Cedar Rapids & Mo. River R.R.*, 24 Iowa 455, 475 (1868).

provision of water, recreational facilities, and open space, and in the regulation of air pollution in urban areas where no other single existing government had sufficient geographic jurisdiction to act effectively or where economies of scale could be realized by a government with broader geographic scope.

(1) *Regional Planning.* The Council of State Governments' report to the Governors' Conference on *State Responsibility in Urban Regional Development* presents the case for state action on regional problems:<sup>8</sup>

State government possesses singular qualifications to make profound and constructive contributions to urban regional development practice. The State is in fact an established regional form of government. It has ample powers and financial resources to move broadly on several fronts. Far-ranging State highway, recreation, and water resource development programs to name a few have had and will continue to have great impact on the development of urban regional areas.

There is a considerable history of regional planning efforts in the United States. In its early phases a distinction was made between city planning, emphasizing physical and land use planning and control, and regional planning for resource development. At present, however, there is increasing emphasis upon regional planning centered in the urban region around cities or complexes of cities. Planning for the functions of natural resource development—viewed in its broadest sense as including metropolitan resources such as transportation and space—on the one hand, and land use control on the other, are brought together in a common framework and proceed along parallel courses. The planning function for urban regions includes the entire area economically and socially dominated by a central urban concentration.<sup>9</sup> The state serves as the governmental entity with sufficient jurisdiction to relate such urban regional planning to planning for those areas within a state which do not contain urban concentrations but which are obviously vital to the economic welfare of the whole state and of the nation.

The need for regional planning which relates urban regional development to total state development policies was given recognition a decade ago in the development of the Model State and Regional Planning Law by the National Municipal League<sup>10</sup> and more recently, in *State Planning: A Policy Statement*, by the Subcommittee on State Planning of the Governors' Conference.<sup>11</sup>

Significant developments in several states give evidence of an increasing recognition of the value of regional planning within their borders to meeting the problems

<sup>8</sup> COUNCIL OF STATE GOVERNMENTS, *STATE RESPONSIBILITY IN URBAN REGIONAL DEVELOPMENT* 17-18 (1962).

<sup>9</sup> For further development of this theme, see Friedmann, *The Concept of a Planning Region—The Evolution of an Idea in the United States*, in JOHN FRIEDMANN & WILLIAM ALONSO (EDS.), *REGIONAL DEVELOPMENT AND PLANNING—A READER* 487-518 (1964).

<sup>10</sup> See Woodbury, *Introduction*, in NATIONAL MUNICIPAL LEAGUE, *MODEL STATE AND REGIONAL PLANNING LAW* 2-7 (1955).

<sup>11</sup> SUBCOMMITTEE ON STATE PLANNING, THE GOVERNOR'S CONFERENCE, *STATE PLANNING: A POLICY STATEMENT* (1962).



presented by increased urbanization. Following the 1955 floods, the Connecticut legislature directed the Connecticut Development Commission to define the logical economic and planning regions of the state and to promote and assist the formation of regional planning agencies. By early 1964, fifteen regions had been defined embracing all but four towns in the state and seven regional planning agencies had been activated, covering seventy-eight per cent of the state's population and fifty per cent of the land area.<sup>12</sup>

California regional planning legislation in 1963 automatically created a regional planning district in each of the regions as designated by a planning advisory committee, with the proviso that the district and its board should not transact any business or exercise any of its powers unless the legislative bodies of two-thirds of the counties and two-thirds of the cities located within the boundaries of the district declare that there is a need for such a district.<sup>13</sup> When established, regional planning districts may prepare, maintain, and revise a regional development plan which takes account of and seeks to harmonize the master or general plan of cities and communities within the region as well as the plans and planning activities of other levels of government. The legislative findings in the Regional Planning Districts Act declare that the state of California has a fundamental interest in the orderly development of the urban regions within its borders.

New York State's Office of Regional Development has recommended the designation of development regions and the creation of regional councils to prepare comprehensive regional plans.<sup>14</sup>

Other examples can be cited of the increasing state recognition of the value of regional planning both as a method of coordinating and correlating development plans within metropolitan areas and as a method of relating metropolitan area development to outlying areas dependent upon the metropolitan complex and to substantially non-urban portions of a state.

(2) *Metropolitan Planning.* Even more directly than a state regional planning district, an effective metropolitan areawide comprehensive planning agency can play a unique and vital role in properly coordinating urban programs and development efforts among the general governments and special districts existing in a metropolitan area. All but a handful of states today authorize metropolitan planning commissions and over two-thirds of the metropolitan areas in the country have taken advantage of this authority to establish official metropolitan comprehensive planning agencies.

The Maryland legislature in 1963 established a regional planning council for the Baltimore metropolitan area that might serve as a model elsewhere. Council

<sup>12</sup> For more details, see CONNECTICUT DEVELOPMENT COMM'N, *CONNECTICUT TAKES STOCK FOR ACTION* (1964).

<sup>13</sup> CAL. GOV'T CODE § 65061.

<sup>14</sup> See N.Y. OFFICE FOR REGIONAL DEVELOPMENT, *CHANGE, CHALLENGE, RESPONSE—A DEVELOPMENT POLICY FOR NEW YORK STATE* (1964).

membership includes representatives from the cities and counties, the Director of the State Department of Planning, and the State Highway Administrator. Upon completion of a development plan for the area, no local physical development project which affects more than a single unit of government may be authorized until the Council has had an opportunity to review and comment on its consistency with general development plans for the area. The Council is financed by local, state, and federal contributions.

In 1963 and 1964 Oklahoma, Iowa, Virginia, Mississippi, and Louisiana provided or extended general authority for counties and cities to create joint metropolitan planning commissions. Hawaii has authorized its counties to establish planning commissions and to formulate a master plan and subdivision and zoning regulations.<sup>15</sup>

(3) *Interstate Metropolitan Areas.* For some types of development planning the most appropriate regions cross state lines. States through the use of various types of interstate procedures can authorize or participate in metropolitan area, river basin, or other appropriate interstate regional planning. This is particularly significant since thirty-two metropolitan areas (SMSAs) now include territory in two or more states, an increase of eight from 1960 to 1963. Altogether these interstate areas had a 1960 population of forty-one million persons or twenty-three per cent of the nation's total.

When an urban region crosses state lines, the problems of planning, development, and administration are multiplied. However, states have had experience with a number of approaches for dealing with interstate regional problems. It is possible for states either directly or through enabling legislation not only to bridge the gap between constituted local governments in regions within their borders, but also, based on recent precedents, to bridge the gap between the states and the federal government where natural regions, such as port areas or river basins, cross state lines. The Delaware River Basin Commission provides such a precedent.

At the present time there are no formal interstate arrangements in operation with the single purpose of regional planning. There are, however, a number of interstate arrangements in which planning constitutes an important element and which illustrate less formal approaches that can be used. The Tri-State Transportation Committee formed by New York, New Jersey, and Connecticut under existing statutory and constitutional powers of the chief executives of each state illustrates this approach. The committee was formed to deal with mass transportation and commuter problems and was directed to develop an immediate action program as well

<sup>15</sup> For the current status and an evaluation of the effectiveness of metropolitan area planning, see SUBCOMM. ON INTERGOVERNMENTAL RELATIONS OF THE SENATE COMM. ON GOVERNMENT OPERATIONS, 88TH CONG., 2D SESS., *THE EFFECTIVENESS OF METROPOLITAN PLANNING* (report prepared by the Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University) (Comm. Print 1964); SUBCOMM. ON INTERGOVERNMENTAL RELATIONS, 89TH CONG., 1ST SESS., *NATIONAL SURVEY OF METROPOLITAN PLANNING* (report prepared by U.S. Housing and Home Finance Agency) (Comm. Print 1965).

as a long-term plan for an integrated, regional transportation network. Uniform or parallel legislation provides another somewhat more formal alternative, illustrated by the Interstate Commission on the Delaware River Basin (INCodel), established in the 1930s pursuant to separate statutes in each of the four participating states—Delaware, New Jersey, New York, and Pennsylvania. While it concentrated its attention primarily on water pollution control, it was originally conceived of as a general developmental body and in structure could have performed this function.

The most formal approach to regional interstate cooperation is the interstate compact. It is a legal instrument in the form of a contract entered into uniformly by the participating states; it provides firm legal commitments and stability for a continuing operation. At present, the closest approach to the conscious use of an interstate compact for urban planning purposes is the New York-New Jersey Transportation Compact adopted in 1959.<sup>15a</sup> The principal activity of the agency established under it has been the study of the mass transportation problem and the development of plans for coping with it. A number of interstate public works agencies have engaged in substantial urban regional planning as a necessary element of their major responsibility for public works programs. The Port of New York Authority provides a significant example as do the Delaware Port Authority in the Philadelphia area and the Bi-State agency in the St. Louis area.<sup>16</sup> The New England Interstate Planning Compact, under consideration in several state legislatures, would establish a commission to study and plan for interstate programs of physical, social, and economic conservation and development in the New England region.

(4) *State Performance of Urban Functions.* The purchase of some dams by the federal government in 1933, and the construction of additional dams, to produce electricity and conserve water and land resources in the Tennessee Valley proved to be a contentious national issue right up through November 1964. One month later, in December 1964, an agreement was announced by the Atomic Energy Commission and the state of California whereby the state will contribute \$80,000,000 toward the total \$100,000,000 capital investment for a joint new atomic power plant. One of the largest in the nation, the plant will help California transfer water to the more arid but burgeoning areas of the state by operating electrically powered pumps to lift water 2,000 feet over the Tehachape Mountains. The California project will be part of an approved "California Water Plan" constituting one of the most ambitious public works developments ever undertaken. Similarly, the State Power Authority of New York has, in the last decade, built a greater hydro-electric generating capacity on the Niagara and St. Lawrence rivers than all the hydroelectric dams of the TVA system.

<sup>15a</sup> 73 Stat. 575 (1959).

<sup>16</sup> For a more detailed discussion of interstate planning in metropolitan areas, see COUNCIL OF STATE GOVERNMENTS, *STATE RESPONSIBILITY IN URBAN REGIONAL DEVELOPMENT* 97-101 (1962).

(5) *Water*. The Council of State Governments, in its report on *State Administration of Water Resources*, found that:<sup>17</sup>

The new demands for water raise questions about the adequacy of the existing divisions of responsibilities for meeting the needs of users. Growing urban populations and the expansion of industry are major causes of increases in water use. At present, urban concentrations and industry are largely dependent upon local government and private action to supply their needs. As their needs expand, local and private resources may be unable to meet the demands and States may find it necessary to undertake water supply programs.

The requirements for river basin development, problems of extraterritoriality, a fixed supply of water, and the urbanization of all or the greater part of a state enhance the probability of increased state activity in the provision of urban water. River basin level planning and development are beyond the capability of almost all metropolitan areas. The state, not the urban areas, is represented on interstate river basin agencies and is the prime party in negotiations with the many federal water agencies.<sup>18</sup>

There is increasing evidence of a recognition of the need for state participation in the development of municipal water supply. Relatively advanced programs of water supply and distribution are underway in both New Jersey and California. Other states are likely to follow their path. New York's Water Resources Commission has the power to make determinations concerning the equitable allocation of state waters for public water supply purposes. In Massachusetts, state legislation authorizes the development of water supply sources by municipalities, with special legislative permission required for the development of water sources outside the municipal boundaries.<sup>19</sup>

(6) *Open Space and Recreation*. Public recreation facilities, particularly those provided by cities, have been strained beyond capacity by the increasing concentration and sprawl of people in metropolitan areas. Cities frequently find themselves ringed in by suburban developments which pre-empt land which might otherwise be used for expanded recreational facilities.

While the 1964 Congress enacted a major land and water conservation fund to provide state and federal outdoor recreation areas,<sup>20</sup> the states themselves pushed forward on an unprecedented scale for park, open space, and recreation programs of their own. State programs involving hundreds of millions of dollars have recently been initiated or approved for submission to the voters in Minnesota, Texas, Indiana, Washington, Florida, and Connecticut. The New Jersey Green Acres Land Acquisi-

<sup>17</sup> COUNCIL OF STATE GOVERNMENTS, *STATE ADMINISTRATION OF WATER RESOURCES* 65 (1957). See also, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *INTERGOVERNMENTAL RESPONSIBILITIES FOR WATER SUPPLY AND SEWAGE DISPOSAL IN METROPOLITAN AREAS* 61-85 (1962) for a description of the state role in urban water allocation, facilitation, and development.

<sup>18</sup> ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *INTERGOVERNMENTAL RESPONSIBILITIES FOR WATER SUPPLY AND SEWAGE DISPOSAL IN METROPOLITAN AREAS* 74 (1962).

<sup>19</sup> *Id.* at 65.

<sup>20</sup> 78 Stat. 897, 16 U.S.C.A. § 4601 (1964).

tion Act of 1961 provided for total funds of \$60 million for acquisition of recreational and open space lands and facilities. New York, in its Park and Recreation Land Acquisition Act of 1960, provided for \$75 million, later extended to \$100 million; and Wisconsin, in a 1961 act, for \$50 million. Pennsylvania's Project 70 is a \$70 million program, and California has just approved a \$150 million bond issue. The Florida Outdoor Recreation and Conservation Act of 1963 created a land acquisition trust fund to be used for the purchase of lands for conservation and recreation. Similar legislation was adopted in Minnesota and North Carolina; and the \$250 million bond issue approved by popular referendum in Ohio included \$25 million for water impoundment sites, park and recreation uses, and conservation of natural resources.

While the recreation areas are part of state-wide programs, there is clear recognition of the pressing demands in urban areas. In Wisconsin a portion of the funds are earmarked for the development of metropolitan area park systems. Pennsylvania's Project 70 is geared to expanding park and open space recreational facilities, particularly around large urban areas.

Though differing in details, these state programs have much in common. The amount of monies involved would have seemed too daring several years ago. The states recognized that they must act quickly and decisively to conserve open space. Funds are being used not only for recreation but also for guiding the direction of urban development. Finally, sound planning procedures have been made an important part of the implementation.<sup>21</sup>

(7) *Transit*. Similar, but perhaps less dramatic, examples can be cited, especially in the population-concentrated northeastern states and California, of state action taken to cope with urban problems that cut across the boundaries of local jurisdictions. To meet urban mass transit needs, several states have acted to reduce railroad tax levies (New York and New Jersey), provide direct state aid for a local mass transit system (Massachusetts), and provide direct subsidies to railroads (New Jersey). The Port of New York Authority, long criticized for neglecting mass transit problems in favor of the private automobile, has taken over the bankrupt Hudson and Manhattan Railroad, a crucial commuter facility operating between northern New Jersey and New York City. The Governor of the Empire State points out that this represents "the first time in our country, to my knowledge, that the proceeds from automobile toll facilities will be helping to finance commuter rail transportation."<sup>22</sup>

#### B. State Aid to Urban Areas

Governor Rockefeller, in his 1962 Godkin lectures, threw down the gauntlet to the states:<sup>23</sup>

<sup>21</sup> COUNCIL OF STATE GOVERNMENTS, *STATE RESPONSIBILITY IN URBAN REGIONAL DEVELOPMENT* 149-50 (1962).

<sup>22</sup> NELSON A. ROCKEFELLER, *THE FUTURE OF FEDERALISM* 50-51 (1964).

<sup>23</sup> *Id.* at 24.

In concrete terms: if a state government lacks the political courage to meet the needs of its people . . . the leadership of this state puts itself in an exceedingly poor position to weep over the growth of federal power. The preservation of states' *rights*—in short—depends upon the exercise of states' *responsibilities*.

As might be expected, the more urbanized states are most active in attempting to meet their urban development problems. Most of their efforts have been directed simply to keeping up with rapid urban population growth. The Council of State Governments found that "state provision of such financial aid in a number of important urban development programs has been quite limited."<sup>24</sup> But the winds of change are already reaching the states. We next examine some of the more significant developments in the way of direct state action, financial assistance, and services in aid to local governments.

(1) *Financial and Technical Assistance.* There are, in every state, notable examples of significant financial and technical assistance to local governments, by a wide range of functional agencies. More than half the states make payments to local governments for public education, health, hospitals, welfare, and highways. A lesser number provide grants for libraries, fire, police, water and sewer, and housing.

A number of new technical assistance activities for specific urban operating programs are being authorized in state legislatures. In 1963 alone, these included comprehensive transportation planning assistance in Ohio, Tennessee, and Minnesota; general local planning assistance in Idaho, North Dakota, Florida, and South Dakota; and new state-local assistance for water supply in New York, Texas, and New Hampshire. The Arkansas Highway Department is now authorized to provide engineering services to counties for federal aid-secondary highways; Florida, North Carolina, New Hampshire, and Connecticut legislation initiated programs for developing local outdoor recreation facilities; and Arkansas, Tennessee, North Dakota, Oklahoma, and Massachusetts have established new law enforcement training programs for use by local governments.

A report published by the Council of State Governments<sup>25</sup> reviews a host of other technical assistance services available from staff agencies of state government in the fields of finance, legal services, purchasing, planning, and personnel.

New York, which already contributes to municipal sewage treatment plant construction and operating costs, in 1963 authorized financial assistance for comprehensive engineering and economic feasibility studies for projects to meet water supply needs. The governor has proposed a billion dollar bond issue to the state legislature to finance a six-year program for pure water in the state, under which the state would assume thirty per cent of the cost as its share (the balance to be financed

<sup>24</sup> COUNCIL OF STATE GOVERNMENTS, *STATE RESPONSIBILITY IN URBAN REGIONAL DEVELOPMENT* 62 (1962).

<sup>25</sup> COUNCIL OF STATE GOVERNMENTS, *STATE TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS* (1962).

by federal and local contributions) for construction of treatment plants and interceptor sewers.

A new Kansas law provides state assistance for water conservation storage projects including financial aids for projects which "create benefits beyond the local boundaries." Other state legislative actions in 1963 and 1964, to provide financial assistance or more effectively control pollution, were taken by Oregon, Maryland, New Hampshire, Minnesota, Colorado, Illinois, Kentucky, Vermont, Georgia, and Texas.

A recent review of thirteen major metropolitan area transportation studies in the United States indicates that state highway officials are represented on almost all of the policy committees, along with federal and local representatives. State highway funds have been used in almost all of these comprehensive urban transportation studies.<sup>26</sup> In addition, more than half the states have now set up special urban units within their highway departments.

A new Georgia law, enacted in 1963, shows promise of actively encouraging joint projects by authorizing state aid where political subdivisions establish joint undertakings. It is an example of how other states might actively encourage joint urban development efforts by two or more of their political subdivisions. Briefly, the Georgia act authorizes all state departments and agencies to assist individual political subdivisions jointly in cases where the political subdivisions are "able and willing to provide for the consolidation, combining, merger, or joint administration, of . . . any . . . function . . . by the two or more units, so as to effectuate economy or simplification in the administration or financing thereof." The Georgia law also provides that the state share of financial assistance can be increased for joint projects.

In practically all other urban governmental functions, the states play some direct role, in addition to financial aids, in the administration of local government services. Thus, in recent decades, state supervision and control of education have been expanded and tightened. About three-fourths of the states have established the office of state fire marshal as a central state agency to encourage local fire-prevention activities and to conduct fire investigations and prosecutions. Similar responsibilities are carried out by most states for such urban services as police, welfare, water supply, sewage disposal, air pollution control, and planning.<sup>27</sup>

(2) *State Role in Federal Urban Development Programs.* The following eleven federal programs of financial assistance affecting urban development and related activities are already administered through the states: hospitals and related medical

<sup>26</sup> RICHARD M. ZEITTEL & RICHARD R. CARLL, SUMMARY REVIEW OF MAJOR METROPOLITAN AREA TRANSPORTATION STUDIES IN THE UNITED STATES, SPECIAL REPORT, THE INSTITUTE OF TRANSPORTATION AND TRAFFIC ENGINEERING, UNIVERSITY OF CALIFORNIA 65 (1962).

<sup>27</sup> For a detailed description of state responsibilities for 15 major urban services, see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, PERFORMANCE OF URBAN FUNCTIONS: LOCAL AND AREA-WIDE (1963). See also the latest edition of *The Book of the States*, which provides an authoritative source of information on significant new developments in each of the major state services.

facilities, waste treatment facilities, school construction in federally impacted areas, highways, area redevelopment, urban planning assistance to localities with populations of less than 50,000, National Guard facilities, fish and wildlife restoration, civil defense, disaster relief, and airport construction in cases where a state requests channeling.

In 1955, the Commission on Intergovernmental Relations (Kestnbaum Commission) found only two states offering significant financial aid for public housing and slum clearance, and it urged more states to do so. By 1962, fourteen states were providing direct financial aid to their localities for housing to be rented or sold; and four authorized grants or loans to assist municipalities in paying the local share of federally aided renewal projects. In the airport program, thirty-three states assist their localities to some degree, and thirteen have regular cost-sharing keyed to the federal grant program. In addition, a few states contribute to the nonfederal shares of programs for urban planning assistance, hospital and medical facilities construction, and waste treatment works.

The Advisory Commission on Intergovernmental Relations has advocated that the states further assume their proper responsibilities for assisting and facilitating urban development; to this end, they recommend that federal grants-in-aid to local governments for urban development be channeled through the states in cases where a state (a) provides appropriate administrative machinery to carry out relevant responsibilities, and (b) provides significant *financial* contributions and, when appropriate, technical assistance to the local governments concerned.<sup>28</sup>

The states should be further encouraged by federal law and administration to provide financial assistance to complement and supplement federal efforts, especially in such programs as open space, mass transportation, air pollution, comprehensive planning, urban renewal, low-cost housing, categorical and general assistance welfare, water supply and pollution control, and anti-poverty activities. Ultimately, however, the states must adopt the necessary enabling legislation and subsequent appropriations.

(3) *State Agencies for Urban Services.* In recent years a number of states have been adopting new state governmental machinery to meet the new and dynamic requirements of urbanization. A number of states have established a state office of urban affairs for continuing attention, review, and assistance on problems of local government, finance, structure, organization, and planning. New Jersey, New York, Alaska, Rhode Island, and Pennsylvania have already established such agencies. In 1963 Tennessee established an office of local government with an advisory commission to assist the governor in coordinating state agency policies affecting local govern-

<sup>28</sup> ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *IMPACT OF FEDERAL URBAN DEVELOPMENT PROGRAMS ON LOCAL GOVERNMENT ORGANIZATION AND PLANNING* (1964). See especially Recommendation No. 4, *id.* at 30-33, and Appendix D, "Effects of Channeling Federal Aid Through the States," *id.* at 189-98.



ments and to assist local governments in finding cooperative solutions to common problems. Likewise, the state of Washington's legislature established an office of local affairs in the department of commerce and local development to study needed legislative changes and render technical services to local governments.

State policies with respect to taxation of transportation properties, the regulation of transportation rates and service, highway construction, and industrial development, have an important bearing upon the ability of private and public enterprise to provide adequate mass transportation service to metropolitan area residents. The Advisory Commission on Intergovernmental Relations has recommended enactment of state legislation along the lines adopted by New York state to set up a state agency (1) to advise and assist the governor in the formulation of overall mass transportation policies, (2) make necessary studies and render technical assistance to local governments, (3) consult with the appropriate state, local, and private officials carrying out programs affecting mass transportation, (4) participate in regulatory proceedings affecting mass transportation, and (5) develop proposals for retaining urban and commuter transportation facilities.

Studies of state water resource activity have generally underscored as a major weakness the lack of central agency for planning, policy making, and coordination. The arrangements developed in recent years in North Carolina, New York, and Connecticut, with a state water resources agency primarily responsible for planning and policy making for all phases of water development and with the state health department and certain other agencies retaining their traditional role in those areas where they possess technical capabilities, offer the opportunity for improving the administration of state water functions.

The 1963 California legislature established a new Coordinating Council of Urban Policy as a successor to the Governors' Commission on Metropolitan Area Problems. The council is composed of eighteen members appointed by the governor and representing cities (3), counties (3), school districts (2), the state government (6), and the general public (4). It will function until adjournment of the 1965 legislature, which will review its work and determine whether to enact legislation to continue the Council's existence. Getting underway in early 1964, the Council has taken on as its first year's assignments: (1) to audit the performance, standards, problems, and powers of local agency formation commissions, (2) to study the problems of organizing and financing regional planning programs, and (3) to study the experience of state and local units of government in coordinating their activities on a regional basis.

### C. State Tax and Revenue Authority

The key to an understanding of local government finances in metropolitan areas is the state. The state not only provides the geographic boundaries for the analysis of the

state-local system and local sub-systems of government, but also the role of the states *per se* appear as a dominant determinant of [local government levels of expenditures].<sup>29</sup>

So concludes Seymour Sacks in his study of metropolitan fiscal problems sponsored by the Brookings Institution. Analysis of per capita expenditure in the twenty-four largest metropolitan areas reveals that local fiscal disparities between and within metropolitan areas are a result of (a) state assumption of responsibility for direct expenditures on such functions as public welfare and highways, state aid in financing education, public welfare, and to a lesser extent, highways, and health; and (b) differences in tax bases, especially the extent to which the nonresidential portion of property tax base is used by local governments.

Since the states are the ultimate legal repository of authority over both state and local tax and revenue systems, they are in a particularly important position to assist local governments in financing their operations by direct financial assistance, by providing them with an adequate tax and revenue system through enabling legislation, and by assisting them in tax administration.

(1) *Grants and Tax Sharing.* On the average, local governments receive roughly one-fourth of their total revenue through grants or by other methods from their state governments, ranging from a high of virtually half of total local revenue in Delaware, Louisiana, New Mexico, and North Carolina, to a low of approximately a tenth in New Hampshire, New Jersey, and South Dakota.

The states, in making revenue available to local governments, exert an important influence on government structure and services in metropolitan and urban areas. States can administer grants and tax sharing in a way to minimize differences in local fiscal capacity and resulting disparities in services and to discourage the proliferation of local governments. In Wisconsin, for example, under its residential property tax credit system, a portion of the sales tax is channeled to localities most in need of property tax relief by using a formula which directs the greatest share to districts with the highest effective tax rates. As a further equalizing measure the state collects property tax on utilities and distributes it among taxing jurisdictions, rather than leaving the total return for the jurisdictions where the facility is located.

An example of minimizing level-of-service disparities in a specific program area is provided by the inclusion in state education grant programs of factors designed to measure local tax effort and community educational requirements. Over half the states now use equalized property tax assessment in their measurement of local tax effort, thereby eliminating an inducement for competitive underassessment to qualify for higher aids. Some states—Maine, New York, Rhode Island, and Wisconsin—are using the open-end grant which provides matching shares set by relative capacity of school districts.<sup>30</sup>

<sup>29</sup> Sacks, *Metropolitan Area Finances*, 1963 PROCEEDINGS OF THE FIFTY-SIXTH ANNUAL CONFERENCE ON TAXATION 411-30 (National Tax Association, 1963).

<sup>30</sup> See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN SOCIAL AND ECONOMIC

(2) *The Property Tax*. In spite of dire predictions regarding the limitations of the property tax as a source of further revenue for the local governments, it continues to be productive. In fact, nearly half of the \$22.2 billion increase in state and local tax collections over the decade from 1952 to 1962 came from the property tax.

Reflecting the continuing importance of this source of revenue for local governments, a number of states have taken direct action to strengthen the property tax. However, one of the major problems of intergovernmental fiscal relations is that of rehabilitating the property tax so that it will become more equitable and productive. Some progress has been made, but much remains to be done. There are strong pressures which have so far limited the positive steps toward reform. Varying fractional assessment rates are used although the basic statutes only rarely provide for them. Personal property assessment is frequently erratic. The personal property tax is not collected in many areas and on many types of property. Information regarding the details of assessment levels is frequently unavailable to the individual taxpayer and remedies available to overcome inequitable assessment are frequently expensive, burdensome, and time consuming.

In its recent report on *The Role of the States in Strengthening the Property Tax*, the Advisory Commission on Intergovernmental Relations concludes that establishment of competent professional tax administration, regular publicizing of reliable data on the level and quality of assessment, and facilitating appeal of assessments by the taxpayer are important keys to maintaining the productivity of the property tax in areas where it is in substantial use and to increase dependence on it in areas where it is not.<sup>31</sup>

States have virtually turned the property tax over to local government as a source of revenue, but it is jointly administered by state and local governments. Consequently, the states have a responsibility to see that the property tax is equitably administered and as productive as possible. Much authority to accomplish reform rests with the states, and there is a real challenge to take positive action for improving this single major source of local tax revenue. In addition to determining the appropriate role of the property tax in a well-integrated state-local revenue system, the states are responsible for keeping informed as to the quality of assessing and administration throughout all taxing and assessing districts of the state; making tax information, particularly assessment ratio studies, regularly available to the taxpaying public; providing effective state supervision and coordination of property tax administration, particularly assessment procedures; and assuring that the taxpayer has readily usable and effective means of protecting himself against inequitable assessment.

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DISPARITIES: IMPLICATIONS FOR INTERGOVERNMENTAL RELATIONS IN CENTRAL CITIES AND SUBURBS (1965), for an examination of the problems of disparities, including recommendations for alleviating them.

<sup>31</sup> ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX*, Vol. I (1963).

Equalization of assessment programs are now underway in at least nine states (Arizona, Colorado, Georgia, Idaho, Iowa, Nebraska, New York, Virginia, and West Virginia) and have been undertaken in at least fifteen other states since 1960.

Oregon county assessors are required by law to make annual assessment ratio studies under regulations prescribed by the state tax commission and to post the results separately for enumerated classes of property on the door of the assessor's office. There is thereby made available to all taxpayers a basis for comparing the relationship of the assessment of his property to market value with the assessment of other properties in the same class. The law further authorizes any taxpayer to use this posted assessment ratio as the basis for appealing his assessment and directs county boards of equalization to be guided by it in passing on appeals. A similar result was accomplished by the New Jersey Supreme Court's ruling that state-determined assessment ratios could serve as a basis for granting taxpayers relief from assessments at higher ratios.<sup>32</sup>

A tax court provides a state review agency to which appeals can be taken from the rulings of local review agencies, giving a speedy, inexpensive means of resolving assessment controversies. Of particular interest is the small claims division of the Oregon tax court, which utilizes the regular judge and applies in the property tax field only to real property having a true value of no more than \$25,000. It provides an inexpensive, informal method for settling appeals by the small taxpayer. Small claims procedures in tax court are also available in Maryland and Massachusetts.

(3) *Non-Property Taxes*. In order to relieve some of the pressure on the property tax as a source of revenue for financing these increasing demands, states have begun to look to various non-property levies—primarily the income and the sales taxes (both general and selective). Enabling legislation is still limited, but increasing activity is apparent in this direction. One of the major impediments to the increased use of non-property taxes by local governments is that they are unsuitable for local use except in larger cities. Small local governments find it difficult, if not impossible, to make effective use of non-property taxes, since it is generally uneconomical for them to finance an effective tax collection effort. Furthermore, tax competition among neighboring communities frequently restrains the adoption of additional levies which would put a community in an unfavorable competitive position from the point of view of business and industry.

There are several ways in which the state can directly assist local governments to realize the full potential of non-property taxes, in addition to the initial step of authorizing their levy. The tax supplement made available to local governments provides an illustration. When local sales taxes are made available in a state which has a state-wide sales tax, the rates must be relatively low. As a result, administrative costs are high in relation to the net revenue from this source. By enacting authoriza-

<sup>32</sup> Appeal of Kents 2124 Atlantic Ave., Inc., 34 N.J. 21, 166 A.2d 763 (1960).

tion for a uniform local sales tax supplement to the state tax, states can make available the benefit of superior administrative and enforcement facilities and avoid costly dual tax administration. Identical tax definitions are used in identifying the tax base, the taxpayer, and related matters, thus avoiding additional complexity. Furthermore, the easy availability of the tax on a uniform basis to all local communities tends to contain the inclination toward tax competition. The responsibility for imposing the tax and fixing the rates within the limits of state enabling legislation is left with the local jurisdiction as part of its total fiscal policy determination. Six states—California, Illinois, Mississippi, New Mexico, Tennessee, and Utah—presently provide such general authorization for local governments to enact supplements to a state general sales tax to be collected by the state.<sup>33</sup>

The local income or payroll tax is the other major non-property tax source for local tax revenue. As used by local governments, the tax is basically on earned income for individuals or net profits for businesses and professions and is levied at a relatively low rate. It is generally conceded that suburban dwellers whose income is derived from businesses and occupations serviced by a city should contribute to the support of the city government. However, problems of total tax burden and dual tax liability are created. A uniform city income tax law recently adopted in Michigan overcomes some of these difficulties.<sup>34</sup> Its objective is to assure uniformity, avoid problems of reciprocity, and promote ease of administration. The law provides for a one per cent rate for residents and a one-half of one per cent rate for non-residents. Under the provisions of the act, an individual living in one city and employed in another, both with local income taxes, pays one-half of one per cent to the city of residence and one-half of one per cent to the city where he works, with no one paying in excess of a total of one per cent for local income tax. The tax provisions themselves conform to the extent possible to the federal income tax code, thus simplifying administration.<sup>35</sup>

(4) *Borrowing.* Another fundamental source of financing for local governments is through borrowing. With the continuing high rate of borrowing by local governments to finance expanded facilities, state governments have increasingly provided services and supervision to assist them to borrow as efficiently and inexpensively as possible. Except for the largest metropolitan centers, cities rarely borrow in large enough amounts or frequently enough to become expert in the complex money market. As a result, local governments may pay more interest than necessary or may have difficulty marketing bonds. Such states as Michigan, South Carolina, New York, New Jersey, and California have used their more extensive financial facilities, including specialized knowledge and experience, to assist local governments in ob-

<sup>33</sup> See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *TAX OVERLAPPING IN THE UNITED STATES* 107-10 (1964).

<sup>34</sup> Mich. Laws 1964, P.A. 284.

<sup>35</sup> A description of the tax and comparison of it with other local income taxes appeared in Kressbach, *Local Income Taxation: A Comparative Analysis*, 36 MICH. MUNIC. REV. 161-65, 173 (1964).

taining the lowest possible net interest rates on their borrowing. They have done this through reporting requirements and the offering of technical assistance and by marketing local bond offerings for municipalities.

States make technical assistance available in a number of ways. Specialized staffs assist local governments by establishing standards and providing technical assistance in developing the official statements on local debt offerings. Since the rating given offerings by the various rating houses reflects the availability of the proper type of information in sufficient detail in the basic official statement offering the bonds (the prospectus), it is particularly important that local governments develop adequate statements when borrowing. In addition, in several states an advisory review of specific proposed local bond issues is available or required. In connection with such a review, state agencies provide some of the services which are normally bought by local governments from private bond counsel and financial consultants or, in some instances, provided by the underwriters as part of their services.

Of particular interest is the experience in North Carolina and Virginia with the direct marketing of local bond issues by the state. In North Carolina the Local Government Commission, and in Virginia the State Commission on Local Debt, serve as sales agent for local governments. In North Carolina the procedure is mandatory, while in Virginia it is optional. The optional feature introduces a flexibility which makes it possible to provide the service selectively to those local governments which are not able to maintain adequate facilities of their own. Local governments have benefited by receiving better prices for their bonds and realizing some savings in financial consultants' fees. Furthermore, centralization of bond sales has intensified the competition for offerings. Particularly significant has been the provision of state assistance in planning projects and bond issues before the final sale and the increased availability of detailed information on local finances which tends to upgrade credit ratings.<sup>36</sup>

#### D. Control Over Local Governmental Organization and Powers

The importance of the precedents of history on governmental structure is indicated by the regional pattern of local governments across the country. Historically, in the South the county has been the basic unit of government, while in the North the city and township are the basic units, supplemented by special districts. As the "course of empire" pushed west, concepts of local government were carried along in the form of state constitutions and laws. In the South, and certain western states, the number of local units and levels of government in a state are few. From New York west to North Dakota and then south to Kansas, governmental structure remains to this day more complex. While the average number of governmental units per state is 1,825, more than 4,000 governments are found in each of seven states.

<sup>36</sup> A description of these programs appears in ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE TECHNICAL ASSISTANCE TO LOCAL DEBT MANAGEMENT (1965).

These seven account for two-fifths of the 91,000 governmental units in the United States.

Providing a workable pattern of local government in metropolitan areas today, with variations as circumstances require, is clearly a state responsibility, all the more so because the present structure of governments in metropolitan areas is its handiwork. The present pattern of fragmentation, overlapping, and absence of leadership in tackling area-wide problems has developed in part, like the British Empire, in a fit of absentmindedness; in part because of a local political gamesmanship designed to maximize revenues and minimize demands for governmental services; and finally, in part because of excessive permissiveness by states in permitting new incorporations and special districts.

It is, therefore, encouraging to turn to a review of state actions taken in 1963 and 1964 to make available an arsenal of permissive powers permitting local governments to organize better to meet public service needs, to remove undesirable restrictions, and to exercise state leadership, assistance, and control.

(1) *Annexation.* Among the foremost of the state legislative authorizations, and most commonly used for adjusting the boundaries of local government in urban areas, has been reasonable authority for annexation. At least in urban areas, inhabitants of a minor outlying unincorporated territory should not possess an absolute power to veto a proposed annexation which meets reasonable standards of equity.

In 1963 a number of state legislatures took action to liberalize annexation laws. In Nebraska first-rate cities may now annex contiguous urban or suburban areas by single passage of an ordinance. In Wyoming and Oregon new laws likewise authorize annexation of adjacent territory upon passage of a (city-county) ordinance. South Carolina last year eased its annexation provisions to permit initiation of annexation referenda upon petition of fifteen per cent of the property owners in the incorporated area. Strengthened annexation powers were also granted to municipalities in New York and Arkansas.

(2) *Interlocal Agreements and Other Permissive Powers.* In the last biennium Nebraska, North and South Dakota, New Hampshire, and Maine authorized across the board interlocal contracting and joint enterprises whereby two or more units of local government can exercise jointly or cooperatively any power possessed by one or more of the units concerned. Oregon, West Virginia, New York, Kentucky, and New Mexico have expanded their previously limited authorizations for interlocal agreements. Texas, North Carolina, Kentucky, and Montana have extended local extraterritorial planning, zoning, and subdivision regulation authority.

(3) *Modified Home Rule.* The experience of home rule in such states as Wisconsin, New York, and Texas early demonstrated that as long as states retained the right to act where necessary, there is much to gain and nothing to lose in leaving a wide range of discretion and initiative to local governments. Such action benefits not

only local government, but permits the state government to direct its time and energy to state-wide concerns.

Several legislatures took action in 1963 to submit constitutional amendments to the voters which proposed broadening of home rule powers. The New York proposal, approved by the voters, replaces the city and village home rule laws with greater home rule powers for all classes of municipalities, including towns. The Massachusetts General Court adopted a legislative amendment to the constitution which, if approved by the 1965 session of the legislature and voters at the following election, will confer on cities and towns authority to "exercise any power or function which the General Court has power to confer upon it, which is not inconsistent with the Constitution or laws enacted. . . ." Hawaii, Washington, Idaho, Vermont, New Mexico, and New Hampshire all extended additional home rule authority to their local units of government. Iowa granted cities broad powers of self-determination over "strictly local and internal affairs."

The 1963-approved Michigan Constitution established a number of state-local reforms. The constitution removed a number of limitations on that most hobbled level of government—the county—by providing that any county may frame, adopt, amend, or repeal a county charter within provisions of general law. The grant to counties now parallels the privilege of home rule which had previously been extended to cities and villages. For metropolitan areas, the legislature is authorized to establish additional forms of government or multi-purpose authorities with prescribed powers, duties, and jurisdictions. The constitution also authorizes contractual undertakings between local governments, between a local government and the state, and also external agreements between a local government and other states or political subdivisions.

A significant piece of legislation was enacted by the state of Oregon in 1963 under the title "an Act to provide for creation of a metropolitan study commission to study and propose means of improving essential governmental services in urban areas." This general state legislation provides that metropolitan study commissions to examine ways of improvement of administration of urban services and to identify any new powers or reorganization of local governments to achieve these improvements may be set up by local governmental action or by petition of the voters. Commission members are appointed by the governing bodies of the local jurisdictions. The real strength of the legislation lies in the requirement that, to overcome problems of inertia or obstruction, after a reasonable period these recommendations for implementation must be voted on by the residents of the area affected by the recommendations. No further legislation is needed to initiate studies or implement recommendations after enactment of such general state legislation. Early in 1964, the governments of the Portland metropolitan areas took advantage of this legislation to establish such a study commission and initiate studies.



(4) *Control of New Incorporations.* Surprisingly often municipal incorporations have been designed solely to obtain a liquor license, pre-empt a tax base provided by a new industry, avoid zoning or gambling laws, or to resist annexation by an adjacent municipality. No less than six states enacted incorporation control legislation in 1963 and 1964. The Kansas legislature gave new powers to county boards to control incorporations. In addition to holding hearings and applying standards, petitions are to be denied if annexation of the area to the adjacent city would better serve the interests of the area.

Minnesota broke new ground in 1959 by establishing a state commission to referee annexation disputes and approve only those municipal incorporation requests meeting strict population, economic, and structural standards. A 1963 California statute takes a different approach by creating a local agency formation and annexation commission in every county. The statute specifies a number of factors to be considered in passing on proposed incorporations and special districts. The new California agencies have control over creation of special districts as well as new municipalities. Likewise, new statutes in Georgia, New Mexico, Ohio, and Virginia establish minimum standards for new municipalities.

Remarkable agreement has been achieved on the need for these kinds of actions by the states among a number of national organizations concerned with local governments. Formal action endorsing all or most of the legislative approaches just described has been taken by the Council of State Governments, the Governors' Conference, the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties.

Much remains to be done. Latest information indicates that about one-third of the states have adopted statutes substantially incorporating the proposals for providing and extending general authority for inter-jurisdictional contracting. Only eight states have taken action with respect to suggested statutes for control of municipal incorporations and for offices of local affairs. Only five have acted with respect to proposals for extraterritorial planning and voluntary transfers of functions between cities and counties. Only one state, Alaska, has adopted a constitutional provision giving local governments all functional powers not specifically denied by the state legislature.

#### IV

##### "THE BEST IS YET TO BE"

Currently, the reputation of the states is not high among many urban scholars and other "urbanists." This attitude of downgrading the future of the states is held at a time, as we have attempted to document, when the states are increasingly employing their great powers of regional jurisdiction, legal authority, broad tax base, and power over local governments to the advantage of urban residents. These great state powers are needed as never before to meet the demands of an urban

society for solutions to a catalogue of ills—the economic decline of large central cities and whole regions, the physical and social disintegration in the slum portions of our metropolitan areas, expensive and wasteful urban sprawl, unplanned use of wells and septic tanks, undersized public facilities to meet suburban growth, inadequate public transportation facilities, and an increasingly aging population.

We have identified a number of significant direct state activities, increased financial and technical aid, the granting of a range of permissive powers to let local governments help themselves, and removal of restrictions designed for a bygone era. Spurred on by increasing urbanization, rapid reapportionment, the competition and stimulus of federal activities, and better understanding of how to deal with urban problems, states are likely to play a more and more significant role of oversight and assistance to their urban areas.

The list of remedies available is long. State-granted permissive powers for local governments include:

- (1) simplified statutory requirements for annexation of unincorporated territory;
- (2) authorization for interlocal contracting or joint performance of urban functions;
- (3) authorization for establishment, upon the initiative of local governments or their citizens, of metropolitan service corporations for the performance of particular governmental services that call for area-wide handling;
- (4) authorization for voluntary transfer of functions from cities to counties and vice versa;
- (5) authorization for the creation of metropolitan area study commissions on local government structure and services;
- (6) authorization for creation of metropolitan area planning bodies;
- (7) authority to municipalities to exercise extraterritorial planning, zoning, and subdivision regulation where such a regulation is not being exercised by county government;
- (8) delegation to local governments of all powers not expressly reserved or pre-empted by the legislature; and
- (9) authority to local governments for consolidation or dissolution of special districts.

State leadership, control, and assistance take the form of:

- (1) a unit of state government for continuing attention, review, and assistance regarding the state's metropolitan areas;
- (2) strict statutory standards for new incorporations within metropolitan areas with such new incorporations subject to state administrative review and approval;
- (3) planning requirements and statutory standards to assure orderly development of urban water supply and sewerage systems;

- (4) direct state performance of selected urban functions as appropriate;
- (5) state financial and technical assistance for a range of urban services;
- (6) significant state financial matching contributions with respect to federal grants-in-aid to local governments for urban development;
- (7) state assistance and incentives for interlocal cooperation;
- (8) a willingness to take legislative or administrative action to mediate disputes of local governments in metropolitan areas which cannot be resolved at the local level by mutual agreement;
- (9) state equalization of local property tax loads among local governments in metropolitan areas; and
- (10) removal of features of state financial aid which encourage local government proliferation.

Yet nothing could be more deceptive or disastrous than to assume that state response to current and new urban demands will be forthcoming automatically. Most states, like Thursday's child, have far to go. *Nil sine magno labore*. Time by itself will play a neutral role. Leadership will be required for minor as well as major advances, performed without the focus of attention that Washington activities enjoy, acted before a smaller audience. To play our part, state citizens, as well as state officials, must, in the words of Walt Kelly in the introduction to a book on Pogo, resolve that "we shall take our stand upon this very place, with small flags waving and tinny blasts on tiny trumpets, and meet the enemy. And may he not only be ours, he may be us."