

Duke Law Journal

VOLUME 1976

JANUARY

NUMBER 6

SYMPOSIUM ON MUNICIPAL FINANCE

PREFACE

PETER F. COOGAN

Recent events in New York City have brought about a sudden public awareness of the increasing problems faced by municipalities in the financing of public services. News reports, as well as the statements of many public officials, have portrayed the cities' budgetary difficulties as acute, episodic, and therefore susceptible to dramatic remedial action. More thoughtful commentators have noted that the underlying determinants of the financial decay of our older cities—changes in the distribution of population and wealth, varying commitments by federal, state and municipal authorities to the support of the nation's growing social welfare burden, and archaic municipal fiscal and accounting practices—were first apparent a generation ago. While a variety of temporary measures may be necessary, no true solution to the plight of our cities can ignore these longstanding causes.

The issues that must be faced in reaching such a solution, whether long- or short-term in scope, are both legal and political. If a city's assets are insufficient to meet its obligations to its creditors, the law must determine whether, and to what extent, those obligations will be honored. If the creditors are judged to be entitled to municipal assets, the decision regarding which public services are to be sacrificed in the interest of fiscal integrity becomes a highly sensitive political matter. Similarly, many abuses in the municipal securities market might be eliminated by federal legislation establishing uniform disclosure and accounting procedures for municipal issuers. But unless such legislation is drafted with an understanding of the unique attributes of securities issued by political entities, federal regulation might seriously impair the operation of the market which it was designed to improve.

While no single publication can aspire to a comprehensive treatment of the fiscal problems confronting our cities, this special issue of the *Duke Law Journal* addresses many of the more salient aspects of municipal finance. Colin Blaydon and Steven Gilford survey a number of social and economic issues which lie at the heart of any attempt to deal meaningfully with the current urban crisis. Donna Shalala and Senator Carol Bellamy focus on the steps taken at the state level to meet the fiscal emergency faced by New York City in 1975.

Jan Lodal devotes his attention to the necessity for reform in municipal financial information systems, and suggests several ways in which those systems might be improved in light of their four basic purposes—planning, control, management and external reporting. Dean Lawrence King's article describes in detail the most recent federal effort to bring about an orderly distribution of the assets of a municipality for which all preventive measures have failed. The recent amendments to Chapter IX of the Bankruptcy Act represent a carefully drawn compromise between the desirable aspects of a uniform bankruptcy procedure and the very real constitutional limitations on federal interference in municipal affairs.

The unique characteristics of the municipal securities market, and the reaction of that market to the prospect of large-scale default, are the subject of an article by John Petersen, Robert Doty, Ronald Forbes and Donald Bourque. The article presents a study of municipal disclosure practices which sheds considerable light on the operation of the market for municipal obligations. C. Richard Johnson and Robert Wheeler discuss the obligations and possible liabilities of bond counsel—the lawyers who advise and assist governmental entities in the issuance of long-term debt securities. Finally, Manly Mumford, another member of the bond counsel community, devotes his attention to the use and abuse of "advance refunding"—a process whereby municipalities may take advantage of provisions of the Internal Revenue Code to generate revenue from the proceeds of bond sales.

Three student articles round out this Symposium issue. The first, "Federal Regulation of Municipal Securities: A Constitutional and Statutory Analysis," discusses the legal constraints within which any federal legislation to remedy abuses in the municipal securities market must operate. "The Role of the Contract Clause in Municipalities' Relations with Creditors" focuses on some of the constitutional limitations on state legislation intended to ameliorate the effects of municipal fiscal crises by modifying the relationships between cities and their creditors. The third student article, "Creditors' Remedies in Municipal Default,"

deals with the question uppermost in the minds of the holders of a defaulting city's securities: "How may I obtain the repayment promised me when I purchased this city's bonds or notes?"

It is the hope of everyone associated with this Special Issue of the *Duke Law Journal* that the articles presented in these pages will represent a contribution, however modest, to the public dialogue now being carried on in the area of municipal finance. A well-reasoned response by all levels and branches of government is essential to the lessening of the hardships associated with the problems discussed.

ACKNOWLEDGEMENTS

This special issue of the *Duke Law Journal* is based on the proceedings of a Municipal Finance Symposium held at the Duke Law School and the Quail Roost Conference Center in Durham, North Carolina on November 12-13, 1976. The Symposium, funded by a grant from the Ford Foundation, brought together leading legal scholars and practitioners, economists, urban planners and management experts in an effort to explore some of the many facets of municipal finance. Abbreviated versions of the articles published here were presented and discussed at a lengthy public session. Participants then adjourned to the Conference Center for a more detailed discussion of some of the questions raised by the papers. A list of the participants appears below. The *Journal* is grateful for the significant contributions made by each of them.

The editors of the *Journal* wish to express their personal thanks to Professor Joel Fleishman of the Duke Law School and Mr. Louis Winnick of the Ford Foundation for their invaluable assistance in overcoming the many administrative and financial hurdles which were encountered.

SYMPOSIUM PARTICIPANTS

Moderator

Peter F. Coogan, Esq.
Ropes & Gray
Boston, Massachusetts

Authors

Senator Carol Bellamy
New York State Senate
Albany, New York
Professor Colin Blaydon
Institute of Policy Sciences, Duke University
Professor Robert W. Doty
Creighton University School of Law
C. Richard Johnson, Esq.
Isham, Lincoln & Beale
Chicago, Illinois
Dean Lawrence P. King
New York University School of Law
Mr. Jan Lodal
Executive Vice President
American Management Systems, Inc.
Arlington, Virginia

Manly Mumford, Esq.
Chapman & Cutler
Chicago, Illinois
Mr. John Petersen
National Governors' Conference
Washington, D.C.
Dr. Donna Shalala
Municipal Assistance Corporation
New York, New York
Robert Wheeler, Esq.
Isham, Lincoln & Beale
Chicago, Illinois

Panelists

Mr. James Nathan Bailey
Lewis Bailey Associates
Boston, Massachusetts
John G. Harrell, Esq.
Bradley, Arant, Rose & White
Birmingham, Alabama
Professor Bernard Jump
Maxwell School of Public Administration
Syracuse University
Mr. Thomas Mullaney
Vice President, First National Bank of Chicago
Chicago, Illinois
Dr. Robert D. Reischauer
Congressional Budget Office
Washington, D.C.
Leonard M. Rosen, Esq.
Wachtell, Lipton, Rosen & Katz
New York, New York

Professional Participants

James Allen, Esq.
Vinson, Elkins, Searls, Connally & Smith
Houston, Texas
John M. Anderson, Esq.
Peck, Shaffer & Williams
Cincinnati, Ohio
Claud O. Boothman, Esq.
Dumas, Huguenin, Boothman & Morrow
Dallas, Texas
William Eason, Esq.
Kilpatrick, Cody, Rogers, McClatchley & Regenstein
Atlanta, Georgia
Mr. David Hartley
Stone & Youngberg
San Francisco, California
Ted Hester, Esq.
Gambrell & Mobley
Atlanta, Georgia

Mr. Stevens McAleer
White, Weld & Company
New York, New York
Gordon H. Rosser, Jr., Esq.
McGuire, Woods & Battle
Richmond, Virginia
Ronald D. Stallings, Esq.
Powell, Goldstein, Frazer & Murphy
Atlanta, Georgia
Mr. Robert M. Wohlforth
Senior Vice President (Public Finance)
Hornblower Weeks-Hemphill, Noyes
New York, New York