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 treat-
ment 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 compro-
mise 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' Rela-
tions 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

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