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THE METROPOLITAN SPECIAL DISTRICT:
INTERCOUNTRY METROPOLITAN GOVERNMENT
OF TOMORROW*

ROBERT W. TOBIN**

INTRODUCTION

The time is fast approaching when the state legislatures will have to
devise an intercounty form of metropolitan government. The ever-
expanding geographic scope of metropolitan areas has created a situation in which
state and county boundaries have failed to contain the outward push
from many a large central city. This mushrooming growth has rendered
intracounty methods of metropolitan government obsolete and has necessi-
tated a new approach to metropolitan government. On an interstate level
certain compacts have already laid the groundwork for supracounty local
government and have furnished something of a model for intercounty
areas spanning two or more states. However, on an intrastate level little

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Columbia University.


1. This expansion has been attested to by the United States Bureau of the Census
which has called attention to the huge percentage growth in suburban population.
also BOLENS, THE STATES AND THE METROPOLITAN PROBLEM 10 (Council of State
Governments, Chicago, 1956).

2. Approximately 54 out of 174 standard metropolitan areas in the United States
are intercounty in scope. BOLENS, op. cit. supra note 1, at 12. Of these 54 intercounty
metropolitan areas some 24 cross state lines. BOLENS, op. cit. supra note 1, at 14.

3. E.g., the compact changing the Delaware River Joint Commission to the
Delaware River Port Authority (Philadelphia-Camden area) consented to in Act of
July 17, 1952, 66 Stat. 738 (1952); the compact establishing the Bi-State Development
Agency and the Bi-State Metropolitan District (St. Louis-East St. Louis area) consented
to in Resolution of August 30, 1950, 64 Stat. 568 (1950); the Port of New York
Authority compact (New York-Northern New Jersey area) consented to in Resolution

4. The Port of New York Authority has long been held up as a model of
interstate cooperation, but as far as metropolitan problems are concerned, it may be
supplanted as a model by the Bi-State Development Agency in the St. Louis area since
the latter is empowered to perform more functions.
has been done to cope with the problem of the intercounty metropolitan community, an omission which is regrettable in view of the increasing importance of the problem.

At present approximately 30 of the 174 standard metropolitan areas in the United States are intercounty, but intrastate. These thirty areas are located in eighteen states and include such large population centers as Los Angeles, San Francisco, Denver, Boston, Baltimore, Cleveland and Pittsburgh. Nineteen of these areas span only two counties, but six cover three counties, three cover four counties, one covers five counties, and one covers six counties. In short, the census statistics show that the intercounty intrastate metropolitan area is a significant factor in the demographic pattern of American life.

Unfortunately, advances in local government lag considerably behind changes in patterns of population growth. As yet, little consideration has been given to the fact that intercounty metropolitan areas do not have many effective means of achieving area-wide governmental integration. This paper attempts to illustrate the unique ability of the metropolitan special district to satisfy the needs of the intercounty intrastate metropolitan areas and considers the constitutional and legal problems which might present obstacles to the creation of such a supracounty unit of local government.

THE CASE FOR EMPLOYING THE METROPOLITAN SPECIAL DISTRICT IN THE INTERCOUNTY METROPOLIS

Students of local government have never been fond of special districts. However, they have recognized that there are instances in which special districts can be of great utility, especially when political boundaries limit the power of cities and counties to meet area-wide and regional needs.

7. Amarillo, Bridgeport, Buffalo, Charleston (W. Va.), Cleveland, Dayton, Harrisburg, Johnstown, Los Angeles, Macon, New Britain-Bristol, Peoria, Tampa-St. Petersburg, Utica-Rome, Waterbury, Baltimore, Richmond, Norfolk-Portsmouth and Roanoke contain both counties and separated cities within their respective areas, but since none contain more than two counties they are listed here.
8. Atlanta, Brockton, Detroit, Knoxville, New Orleans, Albany-Schenectady-Troy.
11. San Francisco.
12. For a critical analysis of the defects of special districts and public authorities, see McLean, Use and Abuse of Authorities, 42 Nat'l Munic. Rev. 438 (1953); McLean, Threat to Responsible Rule, 40 Nat'l Munic. Rev. 411 (1951); Martin, Therefore is the Name Babel, 40 Nat'l Munic. Rev. 70 (1951); Portes, A Plague of Special Districts, 22 Nat'l Munic. Rev. 544 (1933).
13. Even Thomas H. Reed, a caustic critic of special districts, has conceded their usefulness for spanning political boundaries. Reed, City Growing Pains 14 (National Municipal League, New York, 1941).
When such jurisdictional limitations impede the solution of metropolitan problems, a good case can be made for the use of metropolitan special districts because it is in such situations that the advantages of the special district begin to outweigh its disadvantages. The question to be answered is whether the use of metropolitan special districts can be justified in the case of the intercounty metropolis.

In order to make such an appraisal it is necessary to be cognizant of the principal criticisms aimed at special districts. Among these criticisms are the following: Special districts contribute to governmental inefficiency and complexity by furnishing an added layer of government;\(^4\) they serve as a subterfuge to circumvent constitutional debt limits;\(^{15}\) their head officials are seldom elected and even where they are, the special district so complicates governmental machinery that democratic control is rendered ineffective;\(^{16}\) their creation leads to a competition with other units of local government for tax sources and in borrowing;\(^{17}\) and lastly they enable city and county governments to avoid their responsibilities by creating stop-gap devices.\(^{18}\)

Much of the foregoing criticism has resulted from the cumulative use of special districts in metropolitan areas. The existence of a variety of independent special districts operating in the same areas can be justifiably condemned since it leads to governmental irresponsibility and disintegration.\(^{19}\) There can be no geographic excuse for such diffusion of governmental power, and the creation of a number of intercounty special districts would be indefensible. However, there is much to be said for the use of the multifunctional special district in the intercounty metropolis.

Although the multifunctional special district has some of the same defects as the one-function special district, the former is much more capable of providing responsible integrated government. Under the multifunctional special district, responsibility is focused, and popular control is made more effective. Moreover, the cause of efficiency is greatly advanced. While it is true that the multifunctional special district is inferior to certain other methods of metropolitan government on an intracounty level,\(^{20}\) its

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19. E.g., Chicago, Toledo and the East Bay section of the San Francisco area contain three or more metropolitan special districts operating independently of one another. *Bollens, op. cit.* supra note 1, at 120.
20. Even such an advocate of metropolitan special districts as Ralph Fuchs concedes that county modernization and metropolitan federation may be superior on an intracounty level. Fuchs, *supra* note 15, at 76.
geographic flexibility gives it an advantage over alternative methods on an intercounty level.

Since the foregoing opinion is based on the fact that the metropolitan special district has geographic attributes which make it especially suitable to the governmental needs of the intercounty metropolis, it is necessary to buttress the opinion by illustration. This can only be done by examining possible alternative methods and pointing out their geographical limitations. It will be seen that most other methods are based on changes in city or county government and that these methods suffer from the territorial inadequacies of the entities upon which they are based.

Prominent among these alternative methods have been city-county consolidation and city-county separation. The latter device, now out of vogue except in Virginia, has always been intracounty in scope and accentuates metropolitan area problems by limiting the effective range of urban government. The former method, with the exception of its use in New York City, has also been an intracounty device, generally based on merger of city and county functions in favor of the city. Occasionally, however, the converse has been true. In any event, methods of consolidation and separation are not geographically suited to the bi-county or multi-county metropolitan area.

Strengthening of the urban county is another standard method of metropolitan government which is inadequate for the solution of intercounty governmental problems. This patently intracounty device has often been


22. City-county separation has been employed in Denver (Arapahoe County), St. Louis (St. Louis County), San Francisco (San Mateo County) and Baltimore (Baltimore County). It also might be mentioned that Honolulu is an independent city-county.

23. The shortsightedness of this method is indicated by the fact that both St. Louis and San Francisco have made efforts to reconsolidate with the counties from which they were separated. A consolidation plan for St. Louis and St. Louis County was defeated in 1926, the city voters approving and the county voters disapproving. A 1948 scheme for the consolidation of San Francisco and San Mateo County was also defeated. For a commentary on the defeat of the reconsolidation plan in San Francisco, see Bollens, They All Wanted to Stay Out, 37 NAT'L MUNIC. REV. 309 (1948).

24. New York City was created to span the five counties of New York, Richmond, Kings, Queens and Bronx. County existence has been retained for limited purposes (e.g., district attorneys and judges), but the city government is essentially unitary except for the exercise of some functions by borough governments.

25. Aside from New York, this type of consolidation has occurred in Philadelphia (Philadelphia County), Boston (Suffolk County), New Orleans (Orleans Parish) and Baton Rouge (East Baton Rouge Parish). See generally Willmott, The Truth About City-County Consolidation, 2 MIAH L.Q. 127 (1947).

26. Tennessee has recently passed a statute which allows its four largest cities—Chattanooga, Memphis, Knoxville and Nashville—to consolidate with their respective counties. TENN. CODE ANN. tit. 6, ch. 37 (Supp. 1959).
tied up with constitutional amendments permitting county home rule, but occasionally county reorganization has been effected by general statutes without benefit of explicit constitutional authority. These efforts to broaden the scope of the urban county have been commendable, and it is probably true that the rejuvenated urban county presents the best hope of integrated government for the intracounty metropolitan area. However, even the best of intracounty schemes is not suitable to the needs of the intercounty metropolis.

If the strengthening of the urban county can be rejected as geographically inadequate, the same can be said with more emphasis about such city-oriented schemes as annexation of unincorporated land to the central city, consolidation of adjacent cities, and the exercise of extraterritorial power by the central city. Only the second-mentioned method purports to bring about any important structural change, and although it might in rare instances transcend county boundaries, it is rarely used due to the political difficulties involved. Annexation, once an important method of city expansion, has, with a few exceptions, been rendered almost useless by suburban incorporation and burdensome procedural requirements, and in any event cross-country annexation is not often permitted. As for extra-

27. CAL. CONST. art XI, § 7½; Md. Const. art. XI A, § 1; Mo. Const. art. VI, § 18a (for counties over 85,000 population); Ohio Const. art. X, §§ 3, 4; Tex. Const. art. IX, § 3 (for counties over 62,000 population with 2/3 consent of legislature); Wash. Const. art. XI, § 4. By special amendments home rule has been permitted in Dade County (Miami), Florida (Fla. Const. art. VIII, § 11) and Jefferson Parish (suburban New Orleans), Louisiana (La. Const. art. XIV, § 3e).

28. Ga. Const. art. XI, § 2-7806; La. Const. art. XIV, § 3 (no legislative action taken); Mo. Const. art. VI, § 9; Mont. Const. art. XVI, § 7; N.Y. Const. art. IX, § 2; N.D. Const. art. X, § 170; Ohio Const. art. X, § 1 (no legislative action taken); Ore. Const. art. VI, § 9a; Va. Const. art. VII, § 110.

29. Tenn. Code Ann. tit. 3, ch. 15 (Supp. 1959); Nev. Rev. Stat. §§ 244.125, 244.130, 244.135 (1959). In states like Iowa and Minnesota, where little constitutional reference is made to county government, or in the New England states, where county government is vestigial, or in states like Virginia and North Carolina, where constitutional provisions give the legislature almost unlimited control over counties (Va. Const. art. VII, § 110; N.C. Const. art. VII, § 13), specific constitutional grants of power to allow optional forms of county government would hardly be necessary.

30. V. Jones, op. cit. supra note 14, at 137-43.

31. E.g., in the peninsular section of Virginia around Newport News, there is a consolidation trend involving independent cities.


33. From their respective dates of incorporation until 1900, Chicago grew from 10½ to 190 square miles, Boston from 4½ to 38½ square miles, Pittsburgh from ½ to 28 square miles, Minneapolis from 8 to 53 square miles and St. Louis from ½ to 61 square miles. McKenzie, The Metropolitan Community 336-37 (McGraw-Hill Book Co., New York, 1953).

34. Home rule cities in Texas have virtually limitless power of expansion. Atlanta, Albuquerque and the larger cities of Arizona have also made large territorial gains through annexation.

35. For an example of burdensome annexation procedure, see Ohio Rev. Code ch. 709 (Baldwin 1953). The tendency of suburbs to incorporate has been motivated by a desire to avoid annexation by large central cities. In some states, however, steps have been taken to prevent such restrictive fringe incorporation. See, e.g., Iowa Code Ann. § 362.1 (Supp. 1959).

36. Bollen, op. cit. supra note 1, at 28.
territorial jurisdiction, the best that can be said of it is that it is used in over half the states, but only in a rather limited fashion. Like the other city-oriented methods, it adds political shortcomings to its territorial limitations.

Which of the standard methods then, if any, are geographically adaptable to the intercounty metropolis? It would seem that there are but two, the metropolitan federation and the use of intergovernmental arrangements. The former method, however, has never lived up to its geographic potential and is almost invariably thought of as an intracounty device. It is true that the New York Borough system bears some resemblance to an intercounty federation and that the Toronto Plan, the prototype of modern metropolitan federalism, gives promise of transcending county lines, but it has been more common for metropolitan federalism to be thought of as a division of power between an urban county and its component municipalities. If a metropolitan federation were to diverge from this pattern and become intercounty in scope, it would probably have to be tied to some specially contrived district and would closely resemble a multifunctional special district. It is therefore difficult to think of the intercounty metropolitan federation as a real alternative to the intercounty metropolitan district.

This leaves but one standard method to be considered, the use of intergovernmental arrangements. This device has often been used on an

38. Extraterritorial jurisdiction is usually not large in geographic scope; nor is it large in functional scope, being primarily confined to matters of health and vice. For example, Los Angeles and Chicago can inspect milk at its source; Omaha and Baltimore have health quarantine powers within a 3-mile extraterritorial belt; Chicago can control prostitution within a 3-mile radius outside of its limits; and Indianapolis has general control over vice suppression within four miles of its limits. See V. Jones, supra note 14, at 90-91.
39. For reference to these political shortcomings, see V. Jones, supra note 32, at 542.
40. E.g., the intracounty metropolitan federation in Dade County (Miami), Florida, and the proposed federation for Allegheny County (Pittsburgh), Pennsylvania.
41. The New York boroughs (Bronx, Manhattan, Brooklyn, Queens and Richmond) are roughly equivalent in geographic scope to the counties within New York City. These boroughs perform a few important functions and their presidents serve on the Board of Estimate, the city's highest legislative body. However, power is so centralized in the city that the borough system cannot be thought of as federal.
42. For a general description of this novel system, see Milner, The Metropolitan Toronto Plan, 105 U. Pa. L. Rev. 570 (1957).
43. At present the federation is within York County, but the official planning area covers part of three counties. Id. at 572.
44. E.g., the "Metropolitan Municipal Corporation" designed by the Washington legislature is in effect an intercounty metropolitan federation, but it could also be termed a multifunctional special district. Wash. Rev. Code ch. 35.58 (Supp. 1957).
45. Intergovernmental arrangements have often been used on an intracounty level with a modernized urban county furnishing services by contract to cities (e.g., Los Angeles County) or a central city furnishing services to suburban areas by contract (e.g., Atlanta, Georgia).
intercounty level, particularly as between rural counties. 40 In recent years it has also been used by adjacent urban counties in the solution of joint problems. For example, the metropolitan areas of Detroit, 47 Denver, 48 Seattle, 49 and Northeastern Illinois (Chicago) 50 have intercounty schemes in operation and recent Minnesota legislation is aimed at providing cooperation between urban counties in that state. 51 Unfortunately, intercounty cooperation appears to be directed primarily at planning and gives little indication of going beyond that point, 52 and therefore the geographic potential of this method is virtually nullified by its narrow governmental scope.

As the foregoing survey indicates, the metropolitan special district has a geographic advantage over the other standard methods of metropolitan government in that it can provide a number of functions to a metropolis without being unduly restricted by county or city boundaries. Moreover, there does not appear to be any new approach by which governmental integration could be extended over an intercounty metropolitan area. Conceivably a central county could expand its scope by consolidation with adjacent counties, 53 annexation of contiguous metropolitan territory 54 or by the exercise of extraterritorial jurisdiction. 55 However, in addition to the political difficulties of such methods, there would be numerous constitu-

46. The rural counties of the southeastern states furnish examples of cooperation on public health, public welfare, rural libraries and numerous other projects. None the less, these joint ventures have been at best a partial solution to the basic inadequacy of county government. WAGEN, op. cit. supra note 21, at 353.

47. Pursuant to Mich. Comp. Laws §§ 123.641-123.645 (Supp. 1957) and Mich. Comp. Laws ch. 252 (Supp. 1956) six counties in the Detroit area have formed an intercounty highway committee and are undertaking an area study.

48. Denver has a tri-county planning committee (Denver County, Arapahoe County, Adams County). WAGEN, op. cit. supra note 21, at 678.

49. Four counties in the Seattle area have formed an intercounty planning commission. 45 Nat'l Mun. Rev. 453 (1956).

50. Pursuant to the Northeastern Illinois Metropolitan Area Planning Act, Ill. Rev. Stat. ch. 54, §§ 351-359 (1957), an intercounty planning commission has been created in the populous northeastern sector of the state.


53. Although state constitutions usually permit consolidation the political obstacles are great, particularly where the counties are legislative districts. The greatest obstacle is the additional requirement in most instances, that the affected persons approve consolidation by an affirmative vote. There are, therefore, few examples of county consolidation in urban areas. Among these few examples are the 1919 consolidation of James County with Hamilton County (Chattanooga, Tennessee) and the consolidation of Milton and Campbell Counties with Fulton County (Atlanta, Georgia) around 1930.

54. Although the City and County of Denver has been accorded the power to annex territory in adjoining counties without submitting the issue to a constitutionally required vote (Simon v. Arapahoe County, 80 Colo. 445, 252 Pac. 811 (1927)), most counties have to contend not only with the voting obstacles but also minimum population and area requirements (e.g., Beaufort County v. Jasper County, 220 S.C. 469, 68 S.E.2d 421 (1951)). Alteration of county boundaries is therefore no easy task.

55. Extraterritorial power for counties runs counter to the concept of the county as an administrative unit and would understandably cause great friction. See, e.g., Denver v. Arapahoe County, 113 Colo. 150, 156 P.2d 101 (1945), in which the extraterritorial power of the City and County of Denver was unsuccessfully questioned by an adjoining county.
tional impediments such as: minimum area and population requirements,56 boundary alteration provisions requiring a vote by the persons affected,57 clauses necessitating reallocation of debts as between the new and old governmental units,58 clauses making the county unit a legislative or judicial district,59 and clauses describing subdivisions within counties.60 It is therefore obvious that there are almost insurmountable constitutional obstacles to the geographic growth of urban counties and that the metropolitan special district provides the best solution to the territorial problem of the intercounty metropolis.

THE CONSTITUTIONAL OBSTACLES TO LEGISLATIVE CREATION OF INTERCOUNTY METROPOLITAN DISTRICTS

If it is to be assumed that the multifunctional special district is the answer to the needs of the intercounty metropolis, the question arises as to the legislative power to create such a novel unit of government. Although state legislatures theoretically have the power to create, dissolve and alter local governments at will,61 this power is subject to the restrictions of organic law.62 Consequently the creation of intercounty metropolitan districts could conceivably run afoul of a number of constitutional clauses. Fortunately special districts are less intertwined with the fundamental law of the several states than are the traditional units of local government.63

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56. Many states have such provisions in their constitutions (Arkansas, California, Colorado, Indiana, Iowa, Minnesota, Nebraska, Oklahoma, Oregon and South Carolina). Such provisions greatly impede the attempts of one county to expand at the expense of a neighboring county as well as the attempts to divide one county into two or to effect city-county separation. For an extensive legal analysis of the application of minimum area and population requirements to city-county separation, see generally Rush, THE CITY-COUNTY CONSOLIDATED (The author, Los Angeles, 1941).

57. As a rule both alterations of county boundaries and outright consolidation must be accompanied by an assenting vote. E.g., Mo. Const. art. VI, §§ 4, 5; Cal. Const. art. XI, §§ 2-7804, 2-7805. See also Hines v. Etheridge, 173 Cal. 870, 162 S.W. 13 (1913), in which the consolidation of Campbell County with Fulton County (Atlanta) was challenged for lack of compliance with constitutional voting requirements.

58. Changing county boundaries invariably raises questions of debt reallocation. Los Angeles County v. Orange County, 97 Cal. 329, 32 Pac. 316 (1893); Pinellas County v. Hillsborough County, 70 Fla. 504, 70 So. 558 (1915). These cases involved the separation of Orange County from Los Angeles County and the separation of Pinellas County from Hillsborough County, moves which have proven to be shortsighted in view of the metropolitan growth in both areas.

59. In State v. Cooney, 70 Mont. 355, 225 Pac. 1007 (1924), it was alleged that a city-county consolidation plan interfered with judicial and legislative districts. One big reason for the failure of counties to consolidate has been the fact that counties have been tied to legislative apportionment, thereby discouraging incumbent legislators from tampering with the political status quo. WACKER, op. cit. supra note 21, at 352.

60. Michigan is constitutionally tied to an intracounty system of township government, Mich. Const. art. VIII, § 2.


63. There are very few explicit constitutional references to metropolitan special districts (e.g., Mich. Const. art. VIII, § 31; Mo. Const. art VI, § 30a), but these are, of course, references to special districts in general. E.g., Cal. Const. art. XI, § 20 (debt limitations on districts of all kinds) and Tex. Const. art. XVI, § 59 (dealing with creation of all kinds of special districts).
and thus direct legislative control over special districts is not seriously circumscribed.

By way of illustrating the enviable constitutional status of the metropolitan special district, one need only refer to the numerous instances in which other methods of metropolitan government have been the subjects of constitutional amendments. Changes in the structure of the urban county have produced a number of amendments, as have schemes for city-county consolidation, city-county separation and metropolitan federation. Moreover the Missouri Constitution has provided for a wide variety of metropolitan government methods in the St. Louis area.

Ironically enough, the foregoing amendments have not stilled constitutional challenges to the various schemes involved. In general these challenges have proceeded on the theory that the amendments were not passed in accordance with the amending procedure of the constitution. In this regard three main points have been raised: (1) the amendment covered more than one subject; (2) the amendment was in fact a general constitutional revision and had to be passed by a different procedure; (3) the amendment was improperly passed by the state legislature. However, some suits have gone beyond these narrow grounds and have apparently been based on the illogical theory that the amendment was substantively unconstitutional. Despite the inherent contradiction in such a theory, there are at least two important cases in which a court chose to treat such an amendment as inferior to other portions of organic law.

64. See notes 27, 28 supra.
65. CAL. CONSI. art. XI, § 7; GA. CONSI. art. XI, § 2-7807; Mo. CONSI. art. VI, § 17; MONT. CONSI. art. XVI, § 7; N.M. CONSI. art. X, § 4; TENN. CONSI. art. XI, § 9; WASH. CONSI. art. XI, § 16. Moreover, Florida has special consolidation amendments for Duval and Monroe counties (FLA. CONSI. art. VIII, §§ 9, 10); Louisiana has a special consolidation amendment for Baton Rouge (La. CONSI. art. XIV, § 3a); Pennsylvania has a special consolidation amendment for Philadelphia (Pa. CONSI. art. XIV, § 8).
66. Mich. CONSI. art. VIII, § 2; Minn. CONSI. art. XI, § 2; Mo. CONSI. art. VI, § 17. See also special separation provisions of Colorado Constitution applying to Denver. Colo. CONSI. art. XX.
67. FLA. CONSI. art. VIII, § 11 (Dade County); Pa. CONSI. art. XV, § 4 (Allegheny County). The Ohio legislature, by a point resolution of May 29, 1957 (Ohio Laws 1957, p. 113), proposed two amendments to Ohio CONSI. art. X, §§ 5, 6, dealing with metropolitan federation, but the Ohio voters rejected the “metropolitan federation” amendments in the 1958 general elections.
68. Mo. CONSI. art. VI, § 30a.
69. Gray v. Golden, 89 So. 2d 785 (Fla. 1956) (attack on Dade County home rule amendment); State v. City of Baton Rouge, 215 La. 315, 40 So. 2d 477 (1949) (attack on Baton Rouge consolidation amendment); State v. Cooney, supra note 59 (attack on amendment permitting city-county consolidation between Silver Bow County and Butte, Montana).
70. State v. Cooney, supra note 59.
71. People v. Sours, 31 Colo. 369, 74 Pac. 167 (1903) (attack on Denver home rule amendment); Lucas v. Berrett, 233 La. 896, 98 So. 2d 229 (1957).
72. People v. Horan, 34 Colo. 304, 86 Pac. 252 (1905); People v. Johnson, 34 Colo. 143, 86 Pac. 233 (1905); State v. City of Baton Rouge, supra note 69 (the Louisiana amendment on consolidation in East Baton Rouge Parish left changes in function, as opposed to changes in structure, subject to general and organic law); State v. Cooney, supra note 59.
and thus completely limited by them. Although these holdings were subsequently overruled, they stand as a monument to the fact that constitutional amendments do not necessarily quiet legal objections to changes in local governmental structure. It is to the advantage of metropolitan special districts that they can usually be created without changes in organic law.

It must not be thought, however, that state legislatures have an absolutely free hand in regard to metropolitan special districts. Such entities have points of contact with city and county government, and a state legislature cannot create a special district in such a way that it will impinge upon the constitutionally ordained structure of local government. This would be particularly true as regards the relationship between metropolitan special districts and counties.

For example, in creating an intercounty metropolitan district a state legislature would have to be aware of the rights and prerogatives of constitutional county officers. With very few exceptions, state constitutions make reference to a number of county officers and therefore enshrine them as constitutional officers. These provisions are in many cases a legacy of the Jacksonian era in which great stress was laid on democratic election of county officials and their protection against arbitrary removal by state officials. However commendable these provisions might have been in changing state-dominated, oligarchic county structure, they represent a possible roadblock to the creation of an intercounty metropolitan special district.

County officials are understandably jealous of their power, and they have been at the center of much constitutional controversy over attempts to streamline urban government at their expense. In New York, attacks were directed against county manager government for Monroe County on the ground that the constitutional powers of the county board of supervisors were being usurped; in Virginia the Henrico county (Richmond) governing body refused to give way to a new commission-manager government, invoking various constitutional grounds to justify its desire to serve

73. People v. Horan, supra note 72; People v. Johnson, supra note 72.
74. People v. Curtice, 50 Colo. 503, 117 Pac. 357 (1911). This case was cited in State v. Cooney, supra note 59, as authority for the proposition that newly passed constitutional amendments, however novel they may seem, stand on the same footing as other parts of organic law and must be considered to override conflicting sections of constitutional law since they represent a recent expression of popular will.
75. E.g., Ohio, Rhode Island.
76. For a somewhat dated list of state constitutional provisions referring to county officers, see H. P. Jones, Constitutional Barriers to Improvement in County Government, 21 N.Y.L. REV. 525, 537-539 (1932).
77. V. Jones, op. cit. supra note 14, at 222; Wager, op. cit. supra note 21, at 345.
78. Jacksonian democracy had its biggest effect in the south where state-appointed county officials formed tight-knit oligarchies and where there was no democratic tradition of town government to offset the county or moderate its undemocratic features.
its full term and to appoint the new county manager;\textsuperscript{80} in Missouri the attorney-general launched a quo warranto attack against the police superintendent and board of police commissioners of St. Louis county, challenging their right to dispose the county sheriff;\textsuperscript{81} in Florida the sheriff of Dade County (Miami) refused to give way to a metropolitan safety director;\textsuperscript{82} in Louisiana the police jury of Jefferson parish (suburban New Orleans) waged a long and bitter fight against a new commission form of government;\textsuperscript{83} in Nebraska constitutional objection was made to the appointive powers of a proposed county manager for Douglas county (Omaha);\textsuperscript{84} and in Pennsylvania an amendment had to be added to the state constitution in 1951 to root out county officers who had grimly clung to their posts in Philadelphia despite the long-standing city-county merger in that area.\textsuperscript{85}

Although metropolitan special districts do not normally encroach on constitutional county officers to the extent of provoking such litigation, state legislatures must be aware of the constitutional position of county office-holders in creating metropolitan special districts.

In addition to possible entanglements with county office-holders, state legislatures must consider other constitutional threats to the formation of an intercounty metropolitan district. A legislative draftsman might well explore the state constitution asking the following questions: Are there provisions which would prevent the state legislature from using special legislation to create a metropolitan district for a specific intercounty metropolis? Are there local autonomy provisions which would pose a threat to a local supergovernment? Are there clauses requiring uniform county government or uniformity in taxation, and if so, how might these apply to an intercounty metropolitan district? Are there implied constitutional prohibitions on the creation of unique units of local government, and even if there are not, are there implied prohibitions on the delegation of certain legislative powers, particularly the taxing power, to such a novel entity? Are there constitutional debt and tax limitations, as well as other fiscal provisions, which would impose impossible financial restrictions on a new district?

Of the foregoing questions only one goes to the heart of the legislative power to create an intercounty metropolitan district, namely the question

\textsuperscript{80} Lipscomb \textit{v.} Nuckols, 161 Va. 936, 172 S.E. 886 (1934).

\textsuperscript{81} State \textit{v.} Gamble, 365 Mo. 215, 280 S.W.2d 656 (1955).

\textsuperscript{82} Dade County \textit{v.} Kelly, 99 So.2d 856 (Fla. 1958).

\textsuperscript{83} Ladnier \textit{v.} Molere, 230 Lo. 784, 89 So.2d 301 (1956), in which the police jury had special law pertaining to commission government in Jefferson Parish declared unconstitutional on the ground that it did not offer optional forms of county government as required by the Louisiana Constitution. Subsequently the Louisiana Constitution was amended \textit{La. Const.} art. XIV, § 3e) to allow a change in the government of Jefferson Parish. This amendment was challenged by the police jury but without success. Lucas \textit{v.} Berkett, \textit{supra} note 71.

\textsuperscript{84} State \textit{v.} Tusa, 130 Neb. 528, 265 N.W. 524 (1936).

\textsuperscript{85} \textit{Pa. Const.} art XIV, § 8. See also Lennox \textit{v.} Clark, 372 Pa. 355, 93 A.2d 834 (1953), in which the Pennsylvania judiciary was called upon to decide the fate of county officials in the light of the new amendment.
raising the possibility of an implied constitutional prohibition on the creation of a unique unit of local government. This point has been raised against intercounty metropolitan districts before, but it has seldom won judicial favor since it is based on the assumption that state constitutions are grants of power rather than limitations upon power. The theory underlying such suits is that the state legislature can create only those local governments which are authorized by the constitution. This is a rather weak theory and does not appear to pose a real threat to the creation of intercounty metropolitan districts.

Furthermore it does not appear that the constitutional points raised in the first two questions seriously endanger the legislative power over the creation of intercounty metropolitan districts. The “special legislation” provisions of state constitutions differ a great deal, but none seem to constitute a real roadblock to the creation of intercounty metropolitan districts by special legislation. Although the passage of special acts on the subject of metropolitan special districts has occasionally made it difficult for courts to uphold the constitutionality of the legislation, this type of constitutional objection has not prevented the creation of a number of metropolitan special districts by means of special act. Moreover it does not seem that “local autonomy” provisions will pose any more of a threat than do the constitutional restrictions on special legislation. The real obstacle posed by “local autonomy” clauses is political because they

87. For an apparent judicial acceptance of this theory, see People v. Becker, 203 N.Y. 201, 96 N.E. 381 (1911).
88. It is accepted almost without question that a state needs no specific constitutional authorization to reshape its subdivisions. 1 McQuillin, MUNICIPAL CORPORATIONS 509-510 (3d ed. 1949).
89. About two-thirds of the states have this type of constitutional provision. Some provisions pertain to grants of special privileges, immunities or franchises (e.g., Ind. Const. art. I, § 23); other provisions pertain to the prohibition of special legislation for certain enumerated purposes (e.g., Cal. Const. art. IV, § 25); some provisions prevent special legislation where general laws could be made applicable (e.g., Ill. Const. art. IV, § 22, last para.); still other provisions prevent local laws without prior public notice (e.g., N.J. Const. art. IV, § 7, para. 8); and there are also provisions requiring that general laws must be uniform in application (e.g., Ind. Const. art. IV, § 23).
91. E.g., the Massachusetts Metropolitan District Commission (Boston), the Baltimore County Metropolitan District, the Minneapolis-St. Paul Sanitary District. The Milwaukee Metropolitan Sewerage Commission, the Port of New York Authority, the Washington Suburban Sanitation Commission and the Metropolitan Transit District (Boston).
92. For examples of local autonomy provisions being invoked against metropolitan special districts, see Robertson v. Zimmerman, 268 N.Y. 52, 196 N.E. 740 (1935); City of Lehi v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).
encourage a parochial viewpoint that is incompatible with broad concepts of metropolitan government.88

Of more interest is the constitutional point raised in the third question pertaining to uniform county government. Where such “uniformity” clauses exist,94 or are implied by the courts,95 they not only endanger county modernization96 but any method of metropolitan government which affects county structure.97 Although practical necessity dictates that urban areas should be allowed to transform a mode of government designed for a simple agricultural society, conservative courts have sometimes invoked “uniformity” clauses to invalidate needed changes in county government.98 Where such clauses are contained in a state constitution, their possible effect on intercounty metropolitan government must be carefully weighed by a state legislature.

Of even more significance than the “uniformity” problem is the question of a state legislature’s power to delegate certain functions to an intercounty metropolitan district. The question of delegating power to local governments has often arisen in regard to the strengthening of urban counties, and frequent constitutional objections have been raised to the legislative grant of municipal-type powers to counties, e.g., planning and zoning.99 rezoning,100 legislating101 and the owning and operating of transportation terminals.102 Unlike the county, the intercounty metropolitan district will

93. Although the home rule movement is sometimes linked with metropolitan government because it originated as part of the St. Louis metropolitan plan of 1875, a recent report on intergovernmental relations was emphatic in its assertion that home rule has been a roadblock to metropolitan government. 3 U.S. COMM’N ON INTERGOVERNMENTAL RELATIONS, REPORT OF THE COMMISSION ON GOVERNMENTAL RELATIONS 54 (June, 1955).
94. E.g., Ga. Const. art. XI, § 2-7806; Mo. Const. art. VI, § 8 (allows for four classifications of counties with uniformity in each class); Nev. Const. art IV, § 26; Wash. Const. art XI, § 4; Wis. Const. art IV, § 23.
96. The principle of uniform county government has been invoked in the following cases involving county modernization: State v. Kiburz, 357 Mo. 309, 208 S.W.2d 285 (1948); McDonald v. Beemer, 67 Nev. 419, 220 P.2d 217 (1950); Gaud v. Walker, supra note 95; State v. Radcliffe, 216 Wis. 356, 257 N.W. 171 (1934).
97. The uniformity principle has been used to plague large cities separated from their counties. In Kahn v. Sutro, 114 Cal. 316, 46 Pac. 87 (1896), a constitutional clause on uniform county government (Cal. Const. art. XI, § 4, repealed in 1933) was used to rebut the argument that there should be no county officers in San Francisco; in People v. Johnson, supra note 72, the Colorado court, without relying on an explicit uniformity provision, forced the city of Denver to maintain in office the same set of county officials as found in other areas in the state; in State v. City of St. Louis, 356 Mo. 820, 204 S.W.2d 234 (1947), it was held that the municipal assembly of St. Louis had to perform functions normally carried out by county governing bodies in the rest of the state.
98. Gaud v. Walker, supra note 95; State v. Radcliffe, supra note 96.
99. Mogilner v. Metropolitan Planning Comm’n, 236 Ind. 298, 140 N.E.2d 220 (1957); Oursler v. Board of Zoning Appeals Baltimore County, 204 Md. 397, 104 A.2d 568 (1953); State v. Loesch, 350 Mo. 989, 169 S.W.2d 675 (1943).
probably not encounter much constitutional opposition on the question of planning or the performance of any proprietary service, since both have been considered a normal function of metropolitan special districts. However, there may be considerable constitutional furor over the delegation of certain basic governmental powers to an intercounty metropolitan district, particularly if its governing body is not directly elected or composed of elected city and county officials. Already there have been a host of cases challenging the delegation of taxing powers to metropolitan special districts with non-elective governing bodies,\textsuperscript{103} and although this theory of suit has not been well-received by the courts,\textsuperscript{104} it indicates a source of constitutional attack of which legislatures must be aware in creating intercounty metropolitan districts.

In addition to the problem of delegating taxing power, legislatures will have to consider a variety of related fiscal problems stemming from state constitutional provisions. For example, there is the important questions of tax collection and tax assessment procedure. Even if it is assumed that intercounty metropolitan districts can be granted the taxing power, it does not follow that they can usurp the functions of county tax collectors or county tax assessors, particularly if the latter are elected officials or constitutional officers.\textsuperscript{105} In all probability intercounty commissions will rely on county tax assessors, tax collectors and treasurers to gather and keep track of their tax revenues.\textsuperscript{106} Although this will avoid serious political and constitutional problems, it still will not provide uniformity of taxation throughout a metropolitan area.\textsuperscript{107} Intercounty commissions, in the absence of state equalization boards,\textsuperscript{108} must be given power to equalize assessment differences between their component counties, at least for the purpose of metropolitan taxation.\textsuperscript{109}

\begin{footnotesize}
\begin{enumerate}
\setcounter{enumi}{103}
\item Metropolitan Water Dist. of Southern California v. Burney, 215 Cal. 582, 11 P.2d 1095 (1932); Golden Gate Bridge and Highway Dist. v. Felt, 214 Cal. 308, 5 P.2d 585 (1931); Wilson v. Board of Trustees of Sanitary Dist. of Chicago, supra note 90; State v. Akron Metropolitan Park Dist., 120 Ohio St. 464, 166 N.E. 407 (1929), aff'd, 281 U.S. 74 (1930); City of Lehi v. Meiling, supra note 92.
\item One rare instance in which a court accepted this theory was in the case of Van Cleve v. Passaic Valley Sewerage Comm'n, 71 N.J.L. 574, 60 Atl. 214 (1905).
\item In Florida, for example, county tax assessors and county tax collectors are constitutional officers who must be elected. Fla. Const. art. VIII, § 6. See also Colo. Const. art. XIV, § 8.
\item This is the system provided by the Washington Legislature for a "Metropolitan Municipal Corporation." Wash. Rev. Code ch. 35.58 (Supp. 1957).
\item See, e.g., Huron-Clinton Metropolitan Authority v. Boards of Supervisors, 304 Mich. 328, 8 N.W.2d 84 (1943), in which an intercounty metropolitan district could not decide on a uniform method of assessment for its five component counties and threw the problem into the courts.
\item Arkansas, California, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio and Pennsylvania are among the states having some tax equalization authority on a state level.
\item There are constitutional mandates on uniformity of taxation (e.g., Colo. Const. art. X, § 3; I.t.l. Const. art. IX, § 9) which might require some attempts at tax equalization by a metropolitan government. In his article on metropolitan special districts Ralph Fuchs placed emphasis on the necessity of such a method of promoting equal distribution of the tax burden. Fuchs, supra note 15, at 75.
\end{enumerate}
\end{footnotesize}
Another important fiscal problem stems from constitutional limitations on the power of local governments to incur debt and levy taxes. Debt limitations have primary application to municipal corporations, but they also apply to counties and occasionally to special districts. Due to the fact that metropolitan special districts have often been viewed by the courts as municipal corporations, they have occasionally been made subject to municipal debt limitations. Where such constitutional restrictions have been applied to metropolitan special districts, their debt has been computed separately from the debts of municipal corporations within the district. This latter fact is just one of the fiscal considerations which must be taken into account in the creation of intercounty metropolitan districts.

Closely related to constitutional debt limitations are clauses restricting the taxing power of local governments. The Washington legislature has provided a recent example of the effects of such tax limitations upon the creation of metropolitan special districts. The “Metropolitan Municipal Corporation” authorized by the Washington legislature was squarely faced by a constitutional tax limit which prohibited state and local taxation on personal and real property in excess of 40 mils without the consent of three-fifths of the voters in an election. Since the full millage rate had been reached in some urban areas, the statute permitting the creation of new metropolitan districts had to include a provision on voter approval for a one mil excess of the tax limit. It is fiscal constitutional problems of this nature that will hamper the legislative power to create a metropolitan special district for an intercounty metropolis.

However, it is to be hoped that state legislatures will have sufficient constitutional leeway to create or to permit the creation of intercounty metropolitan districts possessed of the power to provide equalization of services over a whole area and to reach important tax sources which could
benefit a whole metropolitan area by paying their fair share. As things stand now, many metropolitan areas display a gross inequality in taxes and services from section to section. Somehow metropolitan governments must step into the picture and eliminate the more exaggerated effects of fiscal balkanization. This does not necessarily mean absolute uniformity in all area-wide services, since it may be desirable to create taxing districts which differentiate between the more urbanized and less urbanized areas, but it does mean that some brand of financial order must be imposed in order to end a chaos of inequality and deprivation in the midst of plenty. Such order is particularly essential to the intercounty metropolis since it overlaps so many local governments.

THE POLITICS OF INTERCOUNTRY METROPOLITAN GOVERNMENT

No matter how fine a plan of metropolitan government may appear to political scientists and lawyers, it is worth little if it is not politically acceptable. There are some governmental purists who insist on no compromise with the whims of the electorate, but in the final analysis it is the metropolitan area voters who must accept or reject a given plan of metropolitan government, provided, of course, that the legislature permits a referendum rather than arbitrarily imposing a special district upon a metropolis. The experience of decades has shown that citizens of a metropolis do not take easily to drastic changes in the familiar institutions.

118. Victor Jones points out that city dwellers dislike paying taxes for the purpose of building and providing services in less settled areas of a metropolis. He also notes that rich suburbs are loath to help a run-down central city. V. Jones, op. cit. supra note 14, at ch. VII. Consequently metropolitan areas have deteriorating areas existing alongside of rich tax sources. Chicago, for example, cannot tax many big industries outside its limits but within its metropolitan area, with the result that federal money must be sought.

119. Bollens, op. cit. supra note 1, at 20-21; V. Jones, op. cit. supra note 14, at ch. VII.

120. The Baton Rouge plan, in addition to urbanized and non-urbanized tax districts, also provided for an industrial district. Any metropolitan plan which allows for two or more districts must contend with constitutional provisions on uniformity of taxation. This was a minor point in the test case against Baton Rouge consolidation. See State v. City of Baton Rouge, supra note 69.

121. "The metropolitan areas are the great reservoirs of wealth and population, but they are the simultaneous builders of slums and possessors of needy persons — a Dr. Jekyll in wealth, a Mr. Hyde in needs." 2 U. S. Comm'n on Intergovernmental Relations, Advisory Committee Report on Local Government 24-25 (June, 1955).

122. Thomas H. Reed has expressed the view that it is better to suffer defeat with a good sound plan than to compromise. He has stated that special districts, even multi-functional special districts like the Boston Metropolitan District, hinder true progress toward metropolitan government. Reed, The Metropolitan Problem, 30 Nat'l Munic. Rev. 400-408, 460 (1941).

123. Usually legislatures are not bound to allow a popular vote on the creation of special districts, and a number of important metropolitan special districts have been created without a referendum. E.g., the Massachusetts Metropolitan District Commission (Boston), the Baltimore County Metropolitan District, the Minneapolis-St. Paul Sanitary District, the Milwaukee Metropolitan Sewerage Commission, the Port of New York Authority, the Washington Suburban Sanitary Commission, the Metropolitan Transit District (Boston).
of local government and that they like their metropolitan government in small doses. It has also been demonstrated that local politicians can present formidable opposition to any plan of metropolitan government which threatens to undercut their position. From a political point of view it almost seems that genuine intercounty metropolitan government must be brought in gradually through the back door.\textsuperscript{124}

If the foregoing opinion seems unduly cynical, one need only refer to the sorry political history of city-county consolidation movements. City-county consolidation, one of the most drastic and most frequently proposed methods of metropolitan government, has been considered and discarded in many areas.\textsuperscript{125} Where political action has actually been undertaken, defeat has almost invariably followed. These defeats have taken place in state legislatures,\textsuperscript{126} in state-wide votes on constitutional amendments\textsuperscript{127} or in local elections.\textsuperscript{128} Only the successful 1947 consolidation of Baton Rouge, Louisiana, and East Baton Rouge Parish stands out as a significant exception to a general pattern of failure.\textsuperscript{129}

In addition, schemes for metropolitan federation have also had tough political sledding,\textsuperscript{130} despite the fact that the federation device is a much more moderate method of metropolitan government than city-county consolidation.\textsuperscript{131} There are again exceptions to the general history of defeat, for example, the successful federation plan for Dade County (Miami),

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\item \textsuperscript{124} This idea of gradually imposing metropolitan government on a suspicious but lethargic electorate has been often expressed. Bollens, \textit{op. cit. supra} note 1, at 122-23; Fuchs, \textit{supra} note 35, at 73-74; Cottrell & Jones, \textit{Is Integration Possible?}, in \textit{METROPOLITAN Los Angeles—A STUDY IN INTEGRATION} 81-82 (The Haynes Foundation, Los Angeles, Cal., 1955).
\item \textsuperscript{125} Atlanta, Austin, Charlotte, Durham, Houston, San Antonio, Toledo. Bollens, \textit{op. cit. supra} note 1, at 71.
\item \textsuperscript{126} King County (Seattle) 1923, Ramsey County (St. Paul) 1924, Cuyahoga County (Cleveland) 1925, Jackson County (Kansas City, Mo.) 1933, Wyandotte County (Kansas City, Kan.) 1937, Milwaukee County 1937. Bollens, \textit{op. cit. supra} note 1, at 72.
\item \textsuperscript{127} Multnomah County (Portland, Oregon) 1927, Jefferson County (Birmingham) 1936 and 1948, Jefferson County (Louisville) 1937. In 1948 Dade County, Florida voters had an opportunity to decide if a plan consolidating Miami, Dade County and four villages should be submitted to a state-wide vote. The proposal was defeated. Bollens, \textit{op. cit. supra} note 1, at 72.
\item \textsuperscript{128} St. Louis—St. Louis County 1926, Newport News—Warwick County—Elizabeth City County 1950 (later modified consolidation attempts were successful in 1952 and 1958), Bibb County (Macon, Georgia) 1933, Duval County (Jacksonville) 1935, Dade County (Miami) 1955 (later federation attempt successful). Bollens, \textit{op. cit. supra} note 1, at 72. Recently the proposed consolidation of Davidson County and Nashville, Tennessee, was rejected by the voters. 47 NAT'L MUNIC. REV. 399 (1958).
\item \textsuperscript{129} For a brief description of the Baton Rouge plan, see 36 \textit{NAT'L MUNIC. REV.} 413 (1947). For a commentary on its accomplishments, see Kean, \textit{Consolidation That Works}, 45 \textit{NAT'L MUNIC. REV.} 478 (1956).
\item \textsuperscript{130} Local voters turned down a federal type plan for Alameda County (Oakland) in 1916 and a similar plan in 1922. Local voters rejected federation in Allegheny County (Pittsburgh) in 1929. Two federation bills for the Boston area were turned down by the Massachusetts legislature in 1931. In 1930 the Missouri electorate turned down a constitutional amendment allowing St. Louis and St. Louis County to draft a federation charter. Bollens, \textit{op. cit. supra} note 1, at 87.
\item \textsuperscript{131} Federation is, in effect, a partial city-county consolidation which does not require that either city or county surrender its identity.
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However, the Dade County success followed upon the defeat of several other plans of metropolitan government and was greatly facilitated by the fact that only a county-wide majority was needed.

The lessons to be learned from the political failures of the past are plain. In the first place, voters are not likely to accept the complete and immediate establishment of a full-blown metropolitan government. Gradualism, not abruptness, is called for. Secondly, local politicians must somehow be placated without yielding on the basic principles of metropolitanism. Thirdly, elections involving multiple majorities should be avoided if at all possible. They entail almost certain defeat.

The first of the aforementioned lessons ties in with the earlier averment that metropolitan government must be ushered in the back door. This means that proponents of intercounty metropolitan districts should not expect voters to approve schemes which integrate all area-wide functions at once. Sounder strategy calls for a more moderate approach, one by which only a few area-wide functions are transferred to a new intercounty commission. Once the intercounty commission has won acceptance, then it could assume other area-wide services. This growth would be best accomplished under one comprehensive legislative enactment, authorizing in advance the acquisition of certain enumerated functions, subject to a popular vote or consent of most local governments. In this way voters would be called upon to vote on the transfer of individual functions and could see the anticipated service improvements in better perspective. With such an approach the growth of metropolitan government could be gradual. Moreover, this expansion would be orderly and integrated since

132. A "home rule" amendment for Dade County was passed in the general election of November, 1956, and the local voters in May of 1957 approved by a narrow margin a charter for metropolitan government. This charter purported to authorize the performance of certain area-wide functions by the county while leaving various city governments to operate on a purely local level. However, the exact distribution of powers between city and county has been a source of controversy.

133. In 1948 and 1953 Dade County voters rejected consolidation schemes which, among other things, called for merger of Miami's government with that of the county.

134. If the plan had required a majority outside of Miami as well as within Miami, it would have failed.

135. E.g., the voters of the Seattle area on March 11, 1958, rejected a multifunctional special district of broad scope, the city voters approving and the suburbs disapproving.

136. E.g., the Seattle area voters recently accepted a scaled-down multifunctional special district. Among supporters of this new plan were opponents of the proposal defeated in March, 1958. See Nat'l Munic. Rev. 465 (1958).


it would be accomplished by the same governmental unit rather than by a variety of single-function special districts.\textsuperscript{139}

Unfortunately, the function approach has one big drawback, bureaucratic inertia. The sad fact is that established metropolitan districts have shown little inclination to take over additional duties.\textsuperscript{140} In fact, district governing bodies have often lost policy-making control over their own functions and have seldom displayed leadership toward broader metropolitan government.\textsuperscript{141} However, it may be, as some have said, that the multifunctional district has never really been tested and that despair over its future usefulness is premature.\textsuperscript{142} There is much to be said for the latter opinion because there are few metropolitan special districts which have been created with the explicit aim of some day providing a genuine metropolis-wide government. Only time will tell if the more optimistic view is justified.

The second political obstacle in the formation of any intercounty metropolitan district will undoubtedly be the suspicion and hostility of local politicians.\textsuperscript{143} In the past local politicians have often looked upon limited-function special districts with some favor since they have provided stop-gap solutions to functional problems as well as escape from constitutional debt limitations. City politicians have also been interested in the patronage potential of special districts\textsuperscript{144} (many of these units are independent of civil service), and suburban politicians have been favorable to any metropolitan plan which stopped short of annexation to the central city or interference with local autonomy.\textsuperscript{145} However, there is good reason to believe that local politicians might be less enthusiastic about a multi-purpose intercounty metropolitan government with great potential for

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\textsuperscript{139}. In the St. Louis area the voters rejected the formation of a Metropolitan Transit District in 1955. One of the arguments used against this new district was that it was being formed independently of the Metropolitan Sewer District (both these districts were only for the St. Louis side of the river) which had authority to add new functions. \textit{Bollens, Special District Governments in the United States} 65 (University of California Press, Berkeley and Los Angeles, 1957).

\textsuperscript{140}. Id. at 68. The Port of New York Authority, for all the acclaim heaped upon it, has not even brought all metropolitan transportation under its control. The Triborough Bridge and Tunnel Authority and the New York City Transit Authority remain independent. For a general treatment of integration in the New York area, see \textit{Gulick, Metropolis in the Making — The Next Twenty-Five Years in Government in the New York Metropolitan Region} 66 (Regional Plan Inc., New York, 1955). The East Bay Municipal Utility District (Oakland) has turned down requests that it assume broader functions. \textit{Bollens, op. cit. supra} note 16, at 97, 100.


\textsuperscript{142}. Fuchs, \textit{supra} note 15, at 71.

\textsuperscript{143}. For a general treatment of political and other non-legal obstacles to metropolitan government, see Moak, \textit{Some Practical Obstacles in Modifying Governmental Structure to Meet Metropolitan Problems}, 105 U. Pa. L. Rev. 603 (1957).

\textsuperscript{144}. The Chicago Sanitary District (now called the Metropolitan Sanitary District of Greater Chicago) was a rich source of political patronage until political scandals prompted reform. V. \textit{Jones, op. cit. supra} note 14, at 96.

\textsuperscript{145}. \textit{Id.} at 92.
future growth, particularly where this growth would greatly affect the power and prestige of existing local governments. Therefore it might well behoove proponents of an intercounty metropolitan district to win over this small but powerful bloc.

City and county politicians are invariably the main champions of local autonomy against state interference. Fearful of changes in the status quo, local politicians have also raised the local autonomy issue against metropolitan government. Their anti-metropolitan attitude is usually shaped by the fact that their own local government will diminish in power and importance or that their own political power and prestige will decrease. To win their support or at least moderate their opposition, it is necessary to give them some stake in metropolitan government. On the basis of recently passed statutes it seems that intercounty commissions will be put together on a federal basis with membership being chosen from and by local governing bodies and mayors rather than by direct popular vote. Although this may seem an extreme concession to localism, it is the only feasible system for an intercounty metropolis with a number of local governments. Moreover, the experience under the federal system in Toronto has indicated that representatives of localities soon shed their parochialism for a broader view. Apparently this is the best method of winning local officeholders to the cause of metropolitanism.

It might be said that the lack of direct democratic control would be enough to damn a system dominated by ex-officio office-holders. However, a system in which the voters had to directly elect a whole slate of supracounty officers in addition to city, county, state and federal officials would be so complex that democratic control would be ineffective, if not illusory. The solution would seem to be a compromise in which voters could directly elect a chairman or executive to preside over a metropolitan commission composed of local officeholders. This might prove to be an arrangement which could preserve democratic values and provide metropolitan leadership without unduly offending the champions of localism. In any event, no system of intercounty metropolitan government can afford to ignore the

146. Minn. Stat. Ann. § 473.03 (West, Supp. 1959); Wash. Rev. Code § 35.58.120 (Supp. 1957). The Washington law also illustrates how this federal system can be adapted to population differences so as to allow the larger local units greater representation.

147. J. C. Bollens has stated the opinion that a federal type ex-officio governing body for a special district is the best solution to the problem of cross-representation caused by overlapping units of local government. Bollens, op. cit. supra note 16, at 124-25.

148. Milner, supra note 42, at 579.

149. One of the major criticisms of county government has been its lack of strong leadership. To compensate for this a few counties now permit the election of a county executive (e.g., Nassau and Westchester counties in New York). The Washington legislature has attempted to achieve such metropolitan leadership by providing for a chairman selected by the other members of the governing body from outside their own number and from outside the ranks of public office-holders. Wash. Rev. Code § 35.58.120 (Supp. 1957).
possible hostility of local politicos or the petty antagonisms which exist within any large metropolitan area.\textsuperscript{150}

The final political barrier to the creation of an intercounty metropolitan district is the problem of concurrent voting majorities. Perhaps out of deference to local antonomy, state legislatures have often required that a plan of metropolitan government be approved by two or more different political subdivisions within a metropolitan area. Quite often two majorities have been called for, one within the central city and one without.\textsuperscript{181} In such cases the suburban voters have shown a strong tendency to reject metropolitan government.\textsuperscript{152} Other plans have required more than two majorities,\textsuperscript{153} with Ohio having carried the concurrent majority requirement to ridiculous extremes.\textsuperscript{154} The plain fact is that it is hard enough to get one area-wide majority without requiring a whole string of separate majorities, and any strategy for establishing an intercounty metropolitan district should be based on keeping down the number of needed majorities.

\textbf{CONCLUSION}

It seems quite certain that many legislatures will sooner or later follow the examples provided in California, Colorado, Michigan, Connecticut and Washington and permit the creation of multifunctional special districts adaptable to the intercounty metropolis.\textsuperscript{155} The Washington legislation is the most comprehensive and probably offers the best model to other states.\textsuperscript{156} At any rate state legislatures cannot long avoid the necessity of providing intercounty metropolitan government, and as this trend becomes more pronounced, there may be an increased public consciousness of the ties

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\item \textsuperscript{150} This antagonism is greatly accentuated where different political parties are in control of various sections of a metropolis. Moak, supra note 143, at 609-610.
\item \textsuperscript{151} E.g., TENV. CODE ANN. § 6-3709 (Supp. 1959); WASH. REV. CODE § 35.58.090 (Supp. 1957). The St. Louis area has used the two-majority system in three separate elections on metropolitan plans.
\item \textsuperscript{152} E.g., county voters in St. Louis have voted down two out of three metropolitan plans, and in 1958 suburban voters in Seattle turned down a metropolitan plan. Recently, the proposed consolidation of Nashville, Tennessee, with Davidson County was rejected due to a heavy adverse vote outside of Nashville.
\item \textsuperscript{153} E.g., the unsuccessful plan for Allegheny County (Pittsburgh) in 1929, the Newport News—Warwick County—Elizabeth City County consolidation proposal of 1950 (only two of the five needed majorities were obtained), the 1950 proposal to transfer municipal-type powers to Cuyahoga County (Cleveland) (none of the four needed majorities was obtained).
\item \textsuperscript{154} Art. X of the Ohio Constitution allows for a variety of approaches to metropolitan government through county rejuvenation, but the good effect of these provisions is nullified by an impossible requirement that a popular majority be obtained: (1) in the county; (2) in the largest municipality; (3) in the county outside of the municipality; and (4) in each of the majority of the combined total of municipalities and townships in the county.
\item \textsuperscript{155} For citations on these districts, see note 137 \textit{supra}.
\item \textsuperscript{156} See note 44 \textit{supra}.
\end{itemize}
which unite the citizens of a metropolis across city and county boundary lines.  

The boundaries of a metropolitan area bear no relation to arbitrary political limits and are determined by the interaction between the citizens of an urban area and its environs and the extent to which such interaction extends. Although the geographic extent of interaction may differ with each function (e.g., air pollution control may involve a bigger area than sewerage disposal), political practicality dictates that there be but one boundary for all the districts combined under an intercounty commission. It is perhaps too much to hope that such an intercounty government will attract the sentimental attachment which has been accorded to the city and county, but it is certainly to be hoped that citizens of an intercounty metropolis will have enough awareness of their mutual dependence to support an intercounty metropolitan government and to develop some concept of metropolitan home rule.

It is further to be hoped that metropolitan leaders will develop a concept of home rule which recognizes and allows for the continuing territorial growth of metropolitan government. An intercounty metropolitan district must be able to grow, and it would be a shame if such an entity were deprived of the geographic flexibility which is its crowning virtue. Without the power to expand, a metropolitan special district would soon become as territorially restricted as other methods of metropolitan government. Only when it is possessed of power to extend its geographic and functional scope can an intercounty metropolitan district truly lay claim to being the best possible form of supracounty metropolitan government.

157. It has been suggested that the proper role of the state toward metropolitan government should be to give a metropolitan area a push toward solution of its own problems by cutting away legal obstacles and by encouraging metropolitan home rule. V. Jones, op. cit. supra note 14, at 109-110.
158. For a sociological treatment of the factors which determine the extent of a metropolis, see Reiss, The Community and the Corporate Area, 105 U. Pa. L. Rev. 443 (1957).
159. The Massachusetts Metropolitan District Commission (Boston) presides over three metropolitan districts which differ in size.
160. Ralph Fuchs points out that if general taxation powers were granted to a district, one boundary would be a necessity. Fuchs, supra note 15, at 76.
161. Studenski has pointed out that the word “district” has not attracted the loyalty of the average citizen. Studenski, op. cit. supra note 141, at 338.
162. Unfortunately liberal annexation powers have seldom been conferred on metropolitan special districts. For example, the initiative for annexation to most metropolitan park districts lies with the voters of the territory to be annexed. See Cal. Pub. Resources Code § 5573; Ohio Rev. Code § 1545.15 (Baldwin 1953); Wash. Rev. Code § 35.61.250 (1951).