The Legal and Governmental Status of the Metropolitan Special District

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INTRODUCTION

The metropolitan special district is a relatively modern innovation in the area of local government and dates from the creation of the London Metropolitan Police District in 1850. Perhaps the earliest American counterpart of the London experiment was the Metropolitan Police District of New York (1857-1870), although it is said that the Philadelphia area had a metropolitan health district as early as 1806. As the population of America became increasingly urban under the impetus of the industrial revolution, the use of the metropolitan special district became more common. The influx of people into city areas resulted in the creation of sprawling metropolitan communities revolving around one or more central cities and including numerous local governments. Central cities and urban counties were either unable or unwilling to serve the needs of the whole metropolis, and thus the metropolitan special district entered the void to provide area-wide integration of certain key services.

Of course, the metropolitan special district was not the only method used for solving the governmental problems of spread-out urban areas. City-county consolidation or separation, annexation by the central city, strengthening of the urban county, intergovernmental contracts and numerous other devices were employed. However, as compared to other alternatives, the metropolitan special district had certain advantages, the most important of which was its ability to transcend political boundary lines.

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***For the purposes of this paper the term "special district" will not include school districts. This is in conformity with the practice of the United States Census Bureau.

2. Jones, supra note 1, at 44.
and to provide a new but limited form of local government geographically adapted to a metropolis.

The rather unique attributes of the metropolitan special district have not gone unnoticed and a considerable amount of scholarly attention has been devoted to it. 4 Unfortunately, very little has been written on the legal and constitutional nature of the metropolitan district with the result that its juridical and governmental status remain something of an enigma. It is therefore the purpose of this chapter to determine the legal status of the metropolitan special district by analyzing it in four respects: first, its status under state constitutional law; second, its juridical status in non-constitutional litigation; third, the factors which legally differentiate it from other special districts; and last, its governmental nature.

**The Status of the Metropolitan Special District Under State Constitutional Law**

In numerous instances the courts have been called upon to clarify the status of a metropolitan special district in relation to state constitutional provisions dealing with local government. This clarification has invariably entailed an analysis of the metropolitan special district and an attempt to classify it. Almost without exception the courts have found that metropolitan special districts are legislatively designated as bodies corporate and politic, 5 as are most entities invested with independent governmental nature, but beyond this common feature the courts have discovered a multitude of differences. Consequently the judicial decisions in this legal area have varied a great deal from state to state and even, on occasion, within states.

Generally, however, the judicial decisions have revolved around the existence or non-existence of municipal corporate attributes in metropolitan special districts. Since metropolitan special districts seldom have an explicit constitutional status, it has been common for courts to appraise them by the constitutional standards applied to municipal corporations. In the great majority of these cases the courts have seen a substantial similarity between metropolitan special districts and municipal corporations and have likened them to one another for purposes of constitutional construction. 6 However, in some cases the courts have qualified their holdings by asserting that

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4. For a detailed listing of works pertaining to metropolitan special districts, see appropriate headings in *Metropolitan Communities*, a bibliography prepared by the Government Affairs Foundation Inc., Public Administration Service, Chicago, 1956.

5. There are exceptions, such as the Massachusetts Metropolitan District Commission and the Port of New Orleans, which are highly state-controlled. Moreover, there are other instances in which a metropolitan special district is expressly incorporated, but its political nature must be implied from its powers. For example, see the statutory provisions creating the Port of Portland (Ore.) Port District. *Ore. Rev. Stat.* § 778.010 (1957).

metropolitan special districts are not pure municipal corporations, even though they may be so classified in a test of constitutional status.\(^7\)

In a significant minority of cases, the courts have rejected contentions that metropolitan special districts are analogous to municipal corporations for purposes of constitutional construction.\(^8\) The courts in these cases have held metropolitan special districts to be quasi-corporations and have likened them to state agencies vested with some of the powers and attributes of a municipality. The rationale of the minority view has been that the function and autonomy of the metropolitan special district are too limited to classify it with municipal corporations, but it would seem that this line of reasoning has occasionally been a pragmatic rationalization to circumvent serious constitutional restrictions on municipal corporations.\(^9\)

The main constitutional issues raised against metropolitan special districts have involved municipal debt limitations,\(^10\) improper delegation of tax power,\(^11\) the improper use of special legislation,\(^12\) and the constitutional authority of a legislature to create novel forms of local government which overlap existing municipalities.\(^13\) These issues have sometimes been raised by hostile local governments, taxpayers within the district, or by state attorneys general in quo warranto proceedings.\(^14\) In the majority of these suits the municipal corporate status of the metropolitan special district was in dispute, although a few cases were based on the theory that the metropolitan special district was organized in contravention of constitutional provisions pertaining to counties.\(^15\)

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9. In City of Lehi v. Meiling, supra note 8, the majority rationale avoided a debt limitation problem, and in Huron-Clinton Metro. Authority v. Boards of Supervisors, supra note 8, the theory of the opinion was patently designed to avoid a very strong argument that the creating statute was unconstitutional special legislation.
14. Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847 (1935), is a typical taxpayers suit; State v. Metropolitan St. Louis Sewer Dist., 365 Mo. 1, 275 S.W.2d 225 (1955), was a quo warranto proceeding in the name of the Missouri Attorney General, City of New York v. Willecox, supra note 13, illustrates local chauvinism in opposition to the Port of New York Authority.
15. Dahler v. Washington Suburban Sanitary Comm'n, 133 Md. 644, 106 Atl. 10 (1919); Inter-City Fire Protection Dist. of Jackson County v. Cambrell, 360 Mo. 924, 231 S.W.2d 193 (1950).
Except in rare instances, such as the aforementioned cases invoking a "county" theory, constitutional challenges to metropolitan special districts have followed one of two patterns. Under one line of reasoning the plaintiffs have questioned the exercise of certain powers on the ground that the metropolitan special district was not a unit of local government to which such power could be delegated. This theory almost necessarily ran counter to any concept of the metropolitan special district as a municipal corporation. The complete converse of this position has been relied upon in some constitutional suits in which the plaintiffs advanced the theory that metropolitan special districts were municipal corporations and could not, therefore, exceed municipal debt limitations or be created by special acts.

One of the constitutional issues most frequently raised against tax-supported metropolitan special districts is that their creation violates constitutional debt limitations on municipalities. Proponents of this proposition have argued that metropolitan special districts are empowered to incur indebtedness to provide a governmental service even though the cities within their orbit could not provide the same service without exceeding debt limitations. Thus, it has been averred, the metropolitan special district circumvents constitutional provisions intended for the protection of taxpayers within municipalities.

This line of attack strikes hard at metropolitan special districts because they overlay numerous local governments, each of which may have substantial indebtedness. If the indebtedness of a metropolitan special district were computed cumulatively within the metropolitan area, its power to provide adequate services would be impaired, if not destroyed. The courts, however, have not subscribed to this theory of cumulative geographic computation of indebtedness, and the debts of metropolitan special districts have been computed separately from those of local governments in the same area. In instances where metropolitan special districts have absorbed lesser districts with excessive indebtedness, the courts have also taken a rather liberal view of the power to borrow further. Moreover, legislatures have also shown awareness of the problem of cumulative indebtedness and in creating the Minneapolis-St. Paul Sanitary District, the Minnesota legislature expressly excluded the debts of the district from those of its constituent municipalities.

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17. Kocsis v. Chicago Park Dist., 362 Ill. 24, 198 N.E. 847 (1935). The Chicago Park District absorbed 22 smaller park districts, a number of which had exceeded debt limitations. The court permitted the Chicago Park District to incur debt on the basis of the assessed value of the taxable property within the district as a whole.

This does not mean that the courts and legislatures have been insensitive to the need for restricting the indebtedness of metropolitan special districts. The statutes by which or under which they are created often contain provisions limiting the power to tax and to incur debt.\textsuperscript{19} Furthermore, the courts have usually found that metropolitan special districts were subject to constitutional debt limitations on local government.\textsuperscript{20} One significant exception to this view is the case of \textit{City of Lehi v. Meiling}\textsuperscript{21} in which the Salt Lake City Metropolitan Water District was held to be a quasi-corporation not within the purview of the municipal debt limitation provisions of the state constitution.

Another constitutional issue which is often raised in connection with metropolitan special districts involves the delegation of tax power to district directors or commissioners. Such objections have been aimed primarily at non-elective officials and have been explicitly or implicitly founded on the time-honored principle that there shall be "no taxation without representation." The general approach of these suits has been to assert that the legislative tax power can't be granted to private groups or to nongovernmental units of local government which aren't answerable to the people. In California similar arguments have been made on the theory that delegation of tax power to non-elective officials violated a constitutional provision prohibiting state taxation for local purposes except through the medium of "corporate authorities."\textsuperscript{22} By and large, this theory of suit has had little success as applied to metropolitan special districts and has been rejected in suits involving the Metropolitan Water District of Southern California,\textsuperscript{23} the Akron Metropolitan Park District,\textsuperscript{24} the Chicago Sanitary District,\textsuperscript{25} the Salt Lake City Metropolitan Water District,\textsuperscript{26} and the Golden Gate Bridge and Highway District.\textsuperscript{27}

A notable exception to this general rule was the decision in \textit{Van Cleve v. Passaic Valley Sewerage Commissioners}\textsuperscript{28} in which the taxing

\textsuperscript{19} For example see debt limitations under California's Municipal Utility District Act, \textit{PUB. UTI.}, § 12842; under Ohio's Park Districts Act, \textit{REV. CODE OF OHIO}, § 1545.21; and under the special Minnesota legislation creating the Minneapolis-St. Paul Sanitary District, \textit{MINN. STAT. ANN.}, § 445.17 (9) (1945).
\textsuperscript{20} \textit{Koecis v. Chicago Park Dist.}, 362 Ill. 24, 198 N.E. 847 (1935); \textit{State v. Metropolitan St. Louis Sewer Dist.}, 365 Mo. 1, 275 S.W.2d 225 (1955); \textit{Paine v. Port of Seattle}, 70 Wash. 294, 127 Pac. 580 (1912).
\textsuperscript{21} 87 Utah 237, 48 P.2d 30 (1935).
\textsuperscript{22} See cases cited notes 23 & 27 \textit{infra}. For a somewhat related case see \textit{Pacific Gas & Electric Co. v. Sacramento Municipal Utility Dist.}, 92 F.2d 365 (9th Cir. 1937).
\textsuperscript{24} \textit{State v. Akron Metropolitan Park Dist.}, 120 Ohio St. 464, 166 N.E. 407 (1929).
\textsuperscript{25} \textit{Wilson v. Board of Trustees of Sanitary Dist. of Chicago}, 133 Ill. 443, 27 N.E. 205 (1891).
\textsuperscript{26} \textit{City of Lehi v. Meiling}, 87 Utah 237, 48 P.2d 530 (1935).
\textsuperscript{27} \textit{Golden Gate Bridge and Highway Dist. v. Felt}, 214 Cal. 308, 5 P.2d 585 (1931).
\textsuperscript{28} 71 N.J.L. 574, 60 Atl. 214 (1905).
power of the commission was declared invalid on the ground that the district was not a regular political subdivision of the state with officials directly answerable to the voters. As a result of this case, the district had to be reorganized along federal lines so that its revenues could be raised through taxes levied and collected by its constituent municipalities. A somewhat similar system is employed by the Massachusetts Metropolitan District Commission.29

All questions of delegation of tax power have not involved the concept of "no taxation without representation." In Thiellen Metropolitan Sewerage Commission30 it was argued that the creation of the Milwaukee Metropolitan Sewerage District permitted the levy of higher taxes in Milwaukee County than elsewhere and thus created a lack of uniformity in the state tax structure. Thus, it was contended, the legislature had unconstitutionally empowered the District Commission to levy and collect a non-uniform tax. The court dismissed this argument with the assertion that the taxes involved were primarily user taxes collected from those specially benefited and were not, therefore, within the ban on non-uniform taxation.

Of course, constitutional questions of delegating tax power do not have any application to government-enterprise units, most of which are expressly denied the tax power. However, in a case involving the Chicago Transit Authority the tax-delegation argument was given a curious inverse twist, and it was asserted that the Transit Authority was not a municipal corporation precisely because it was denied the tax power by statute.31 This was an inversion of the normal tax-delegation argument in which municipal corporate status is denied to prevent the exercise of the tax power.

Actually, there are a number of metropolitan special districts which not only have delegated tax power but are partially self-supporting as well. Most functions performed by metropolitan special districts are proprietary and produce some revenue. Water and sewerage districts can almost cover their operating cost by user charges but must generally rely on taxes and special assessments for capital improvements.32 Similarly there are government-enterprise units which are authorized to tax to make up for inadequate revenues.33 This hybrid form of finance is quite common among metropolitan special districts.34

30. 178 Wis. 34, 189 N.W. 484 (1922).
31. People v. Chicago Transit Authority, 392 Ill. 77, 64 N.E.2d 4 (1945).
32. Tableman, Governmental Organization in Metropolitan Areas, 70 U. of Michigan Governmental Studies #21 (monograph) (1951). For example, the Chicago Sanitary District is authorized to issue revenue bonds based on user charges. Ill. Ann. Stat., ch. 42, § 329 a (Smith-Hurd 1956).
33. The relatively self-supporting Golden Gate Bridge and Highway District is empowered to levy taxes if necessary. Cal. Streets & Highways Code, § 27169. The Buffalo Sewer Authority, although ostensibly a government-enterprise unit, imposes sewer rentals which have the effect of special assessments for which a tax lien can be imposed. Miller, Metropolitan Regionalism: Legal and Constitutional Problems, 105 U. of Pa. L. Rev. 588, 598 (1957).
34. Tableman, op. cit. supra note 32, at 70.
In addition to the constitutional issues on delegation of tax power and municipal debt limitations opponents of metropolitan special districts have invoked various constitutional provisions against special legislation. This type of objection has even been made in instances where the particular legislation involved was, on its face, a general law. In City of Lehi v. Meiling the Metropolitan Water District Act of Utah was questioned as being special legislation in the guise of general legislation because it benefited only that portion of Utah with substantial population, in particular the Salt Lake City area. Similarly in Thielv. Metropolitan Sewerage Commission it was contended that the Milwaukee Metropolitan Sewerage District, though apparently created under general laws, was really the product of special legislation since the creating statute only applied to counties of the first class, a category which included only Milwaukee County. Neither challenge was successful since the courts have been long committed to upholding legislative classification of local governments where any reasonable basis for such classification existed.

In those cases in which a legislature has used undisguised special legislation to create metropolitan districts it has been contended that the creating statutes either violated provisions against incorporation by special act or that they violated provisions prohibiting the use of special acts where general acts could be made applicable. In Wilson v. Board of Trustees of the Sanitary District of Chicago both of the foregoing constitutional objections were made and caused no little trouble for the court. Despite holding the Sanitary District to be a municipal corporation, the court held that it was not within the scope of constitutional provisions preventing the incorporation of cities, towns and villages by special act. The court sidestepped the second contention by holding that the constitutional ban on the use of special acts when general laws could be made applicable was addressed to the legislature and was not the subject of judicial review. In facing a similar set of contentions in Huron-Clinton Metropolitan Authority v. Boards of Supervisors the Michigan Supreme Court had an even more difficult time upholding the creating legislation. The Michigan legislature, in accordance with a constitutional provision on metropolitan districts, had passed a general act allowing their creation. Yet, despite this, the legislature incorporated the Huron-Clinton Metropolitan Park District by special act. To make things worse, this act

35. 87 Utah 237, 48 P.2d 530 (1935).
36. 178 Wis. 34, 189 N.W. 484 (1922). Wisconsin has a general law enabling the creation of metropolitan sewerage districts (Wis. Stat., § 66-201) but has nonetheless passed special legislation on a metropolitan sewer district for Milwaukee. Laws of Wis. ch. 554, § 59.06 (1921).
37. 1 McQuillin, MUNICIPAL CORPORATIONS 520-521 (3d. ed. 1930).
38. 133 Ill. 443, 27 N.E. 203 (1891).
39. 300 Mich. 1, 1 N.W.2d 430 (1942).
41. Mich. COMP. LAWS, § 119.01 (1948).
apparently ran counter to the constitutional ban on special incorporation. The courts, in order to uphold the act, felt constrained to hold that the Huron-Clinton Metropolitan Park District was a quasi-corporation analogous to a state agency and thus subject to legislative control by special act.

A fourth common constitutional objection to metropolitan special districts involves the power of the state legislature to create overlapping units of local government. Such objections pose a dilemma. If the court holds that a metropolitan special district is a municipal corporation, the district becomes subject to many legal attacks, not the least of which is the oft-repeated argument that two municipal corporations can not exist in the same geographic area. If the court holds the metropolitan special district to be "sui generis," challenges would inevitably be directed at the legislative power to create novel forms of local government unauthorized by some constitutional provision.

The latter argument has never been laid to rest despite the fact that the great weight of authority holds that a state needs no particular constitutional authorization to create and reshape its local subdivisions.⁴³ On the contrary, state constitutions are not grants of power but limitations on its exercise, and the United States Supreme Court has declared that state legislatures have absolute power over their local governmental units, subject only to state constitutional limitations.⁴⁴ Nonetheless, the idea persists that if a state constitution doesn't specifically refer to a certain form of local government its creation is implicitly prohibited.⁴⁵

More commonly, state courts have had to answer objections based on the premise that one municipal corporation can not be superimposed on another. The general answer to this averment is that two municipal corporations may exist in the same area if they serve different purposes.⁴⁶ This general rule was applied by the court in Wilson v. Board of Trustees of the Sanitary District of Chicago⁴⁷ and in Paine v. Port of Seattle,⁴⁸ and thus there is long-standing precedent to the effect that a metropolitan special district may overlap local governments, even if it is legally considered a municipal corporation.

⁴⁴. See Hunter v. Pittsburgh, 207 U.S. 161 (1907) in which the Supreme Court refused to recognize a federally protected right in the resistance of Allegheny County to a legislative plan for consolidating it with Pittsburgh. The court, on pages 178, and 179, made a sweeping declaration of the state's power to reorganize its subdivisions, subject only to the restraints of state constitutional law.
⁴⁵. See People ex rel. Wood v. Draper, 15 N.Y. 532 (1857) and Heiser v. Metropolitan Board of Health, 37 N.Y. 661 (1865) upholding metropolitan districts which were novel units of government. But see People ex rel. Hon. Yost v. Becker, 205 N.Y. 201, 96 N.E. 381 (1911) in which it was held that the creation of a "territory of Sylvan Beach" was constitutionally unauthorized since no constitutional reference was made to a "territory" as a form of local government. For a challenge to a state's right to erect an interstate metropolitan district in cooperation with another state, see City of New York v. Willcox, 115 Misc. 351, 189 N.Y. Supp. 724 (Sup. Ct. 1921).
⁴⁷. 133 Ill. 443, 27 N.E. 203 (1891).
⁴⁸. 70 Wash. 294, 127 Pac. 580 (1912).
The overlapping of municipal corporations has caused related problems pertaining to the question of office-holding. Under the law creating the Louisville and Jefferson County Metropolitan Sewerage District, the city attorney for Louisville was made the lawyer for the municipal board and the Louisville City Council was given sweeping supervisory power over the acts of the board. It was contended that this amounted to a violation of the constitutional provision against the holding of two municipal offices at once, and the Kentucky Supreme Court agreed with this contention, holding the challenged sections invalid. The decision was based on the theory that the Sewerage District was a municipal corporation.

Another constitutional brickbat which has been hurled at metropolitan special districts is the charge that they unconstitutionally invade the domain of local government. In the case of Robertson v. Zimmerman the Buffalo Sewer Authority was upheld as against arguments invoking the home-rule provisions of the New York State constitution. Similar defense of local prerogatives played a role in unavailing challenges directed at the Metropolitan Water District of Salt Lake City and the Metropolitan Park District of Providence Plantations.

Various other constitutional points have also been raised in litigation involving metropolitan special districts. In several cases it was unsuccess- fully claimed that in their acquisition of facilities districts were lending public credit to private parties in contravention of the state constitution. In California it has been held that metropolitan special districts are municipal corporations within the meaning of constitutional provisions making the property of municipal corporations taxable if located outside of the corporate limits. In Ohio it has been held that the power of county probate judges to appoint metropolitan park commissioners isn't an invalid delegation of an executive function. In Illinois it has been held that the Chicago Transit Authority can be headed by a mixture of gubernatorial and mayoral appointees without violating constitutional provisions on the separation of powers. However, these cases represent only a few of a number of isolated holdings.

52. Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., 309 Ky. 442, 217 S.W.2d 232 (1949).
55. In Re Opinion of the Justices, 34 R.I. 191, 83 Atl. 3 (1912).
57. Metropolitan Water Dist. of So. Cal. v. Riverside County, 21 Cal. App.2d 640, 134 Pac. 249 (1943).
59. People v. Chicago Transit Authority, 392 Ill. 77, 64 N.E.2d 4 (1945).
Of more general interest are the constitutional problems pertaining to metropolitan special districts operating in interstate areas. The most illustrious of these bi-state districts is the Port of New York Authority which has served as a model of interstate cooperation and efficiency. Comparable to the Port of New York Authority are the Delaware River Port Authority (formerly the Delaware River Joint Commission) and the Bi-State Development Agency. The former unit serves the Philadelphia-Camden area, and the latter unit is designed to perform a number of functions in the St. Louis-East St. Louis area. These three special districts are the most prominent example of interstate metropolitan government.

Obviously such districts raise certain jurisdictional problems since they don't clearly fall into any of the traditional categories of American federalism. However, for the present these districts are bodies corporate and politic of the states which jointly created them.

The Port of New York Authority technically enjoys the unique distinction of being an interstate municipal corporation since the laws of New York and New Jersey refer to it as "a municipal corporate entity of the two states." However, the rather close ties of the Authority to the state governments of New York and New Jersey would tend to negate the aforementioned statutory language. Early opponents of the Port Authority did not view it as any normal unit of local government and brought suit alleging that the Port Authority District was a quasi-political subdivision existing in violation of the U. S. Constitution which made no provision for such a component of American federalism. It was further alleged that New York ceded its sovereignty to an extra-territorial unit.

60. A further problem exists with reference to international communities (Buffalo, Detroit, El Paso) and metropolitan areas on the international waters of the Great Lakes (Milwaukee, Duluth-Superior, Bay City, Erie, Toledo, Chicago, Cleveland).


62. The compact changing the Delaware River Joint Commission to the Delaware River Port Authority was consented to in Act of July 17, 1952, ch. 921, 66 Stat. 738.

63. The compact establishing the Bi-State Development Agency and the Bi-State Metropolitan District was consented to in Res. of Aug. 30, 1950, ch. 829, 64 Stat. 658. This metropolitan district has not sprung fully into action, but it has broad multifunctional authority and may turn out to be a model for future metropolitan government in interstate areas.

64. A slightly different metropolitan district is the National Capital Park and Planning Commission, 40 U.S.C. § 71, which spans the District of Columbia and its suburban areas in Maryland and Virginia. For an article on the governmental problems of communities spanning state boundaries see Grant, The Government of Interstate Urban Areas, 8 WEST. POL. Q. 90 (1955).

64a. It may be, in years to come, that state constitutional restrictions will be inapplicable to these districts on the ground that they are creatures of national law under a federally approved compact.

65. Art. II of the Port of New York Authority Compact; Art. III of the Compact Establishing the Bi-State Development Agency and Bi-State Metropolitan District; Art. I of the the Delaware River Port Authority Supplemental Agreement.

Both allegations were judicially rejected, and subsequently the states of New York and New Jersey sealed the verdict by providing for gubernatorial veto of Port Authority actions.

Another class of metropolitan special districts which merits separate attention is metropolitan public authorities, some of which enjoy a rather anomalous constitutional status. Unlike a number of other metropolitan special districts metropolitan public authorities are almost invariably state-imposed and lack the voluntary character usually associated with municipal corporations. The additional factor that they have no tax power makes it even more difficult to liken them to municipal corporations. However, the Chicago Transit Authority has been held to be a municipal corporation, its lack of tax power notwithstanding. Moreover, the Massachusetts Legislature, in creating the Metropolitan Transit Authority of Boston, referred to it as an “incorporated municipality.” Similar legislative language has been used in referring to the Port of New York Authority. However, for purposes of constitutional construction it would seem that government-enterprise metropolitan districts are less analogous to municipal corporations than tax-supported metropolitan districts.

The Juridical Status of the Metropolitan Special District in Non-Constitutional Litigation

The legal status of the metropolitan special district is of significance in a number of cases unrelated to constitutional controversies. A great many of these non-constitutional cases have been tort cases in which the courts have had to decide whether a metropolitan special district was protected from suit under the principle of governmental immunity. In order to render a decision on the question of governmental immunity the courts have had to classify the metropolitan special district in relation to the traditional units of government. The courts, in general, have had but three alternatives. They could liken the metropolitan special district to a state agency, in which case its immunity would be virtually complete; they could find the metropolitan special district comparable to a county-like quasi-corporation, in which case its immunity would depend on the degree to which common-law rules of county immunity had been abrogated in the jurisdiction; and lastly, the courts could liken the metropolitan

68. N.Y. Laws, ch. 700 (1927); N.J. Laws ch. 333 (1927).
70. People v. Chicago Transit Authority, 392 Ill. 77, 64 N.E.2d 4 (1945).
71. Mass. Stat. ch. 385, § 1 (1929). It is very seldom that a legislature explicitly designates a special district as a municipal corporation, although the Alabama legislature has thus designated municipal power districts. Ala. Code tit. 18, § 2 (1940).
72. See statutes cited note 66 supra.
special district to a municipal corporation possessed of immunity in cases arising from the exercise of its relatively few governmental functions.

Generally speaking, metropolitan special districts have not been viewed as state agencies for purposes of tort liability. State agencies are considered to have a purely governmental nature which doesn't include a proprietary capacity in which they can be sued, and the courts have been reluctant to clothe metropolitan special districts with such complete immunity. Even where such a classification would be apparently justified, as in the case of the highly dependent Massachusetts Metropolitan District Commission, immunity has been waived by statute. In recent years the New York and New Jersey legislatures have enacted such waiver statutes in regard to the Port of New York Authority, which had formerly enjoyed some degree of immunity. Such statutory waiver of immunity is common and it is therefore seldom that a metropolitan special district can claim to be the alter ego of the state to protect itself from tort suits.

More commonly, the courts have judged the tort liability of metropolitan special districts according to the governmental-proprietary dichotomy connected with suits against municipal corporations. In terms of results it has mattered little whether the courts have viewed a metropolitan special district as a quasi-corporation or a municipal corporation because the modern trend has been to hold that the former entity has a proprietary capacity in which it can be sued. For example, in Morrison v. Smith Bros., it was held that the East Bay Municipal Utility District (Oakland) though not a true municipal corporation, nonetheless was quasi-municipal in nature and thus subject to tort suit on the same basis as a municipality.

74. The Metropolitan District Commission was formed in 1919 and combined under its jurisdiction three pre-existing special districts. It was organized as part of a general realignment of state departments and was actually treated as a state agency. Mass. Stat. ch. 350, § 123 (1919).
78. For purposes of tort liability the Port of New Orleans Board has been deemed a state agency immune from suit. Miller, Royal Indemnity Co. v. Board of Commrs. of Port of New Orleans, 199 La. 1070, 7 So.2d 355 (1942). For a somewhat related case with an opposite holding see Lowes v. Pennsylvania Turnpike Comm., 125 F. Supp. 681 (M.D. Pa. 1955) in which a state authority was held liable in tort despite the fact that it had been granted no independent corporate status and in the face of language declaring its function to be "an essential governmental function of the Commonwealth."
80. See Annot., 16 A.L.R.2d 1079 (1951) on the increasing scope of county tort liability.
81. 211 Cal. 36, 293 Pac. 53 (1930).
Since metropolitan special districts perform most all of their activities in a proprietary capacity, governmental immunity is rarely invoked. 82

Though the status of the metropolitan special district is of primary importance in cases involving constitutional construction and governmental immunity from suit, it occasionally has significance in other contexts. For example, in *State ex rel. Halmrast v. King* 83 it was held that the Minneapolis-St. Paul Sanitary District was "an independent corporation for municipal purposes" and thus not a state agency within the scope of statutory pension plans pertaining to state employees. In *State v. Metropolitan Park District of Tacoma* 84 criminal charges were brought against the Tacoma Park District for requiring female employees in a park restaurant to work overtime in contravention of state laws. It was held by the court that the Tacoma Metropolitan Park District was a municipal corporation and thus not subject to criminal prosecution for willful ultra vires acts. 85 In *Nelson-Johnston & Doudna v. Metropolitan Utilities District* 86 the court held that the Omaha Metropolitan Utilities District was a municipal corporation in the broad sense and thus had implied power to perform acts reasonably necessary to the fulfillment of its proprietary function.

**Metropolitan Special Districts as Contrasted to Other Special Districts**

From a legal and constitutional view, metropolitan special districts differ from other special districts. These differences stem from certain non-legal characteristics which are peculiar to the metropolitan special district, the most important being the simple matter of geographical location. 87 Unlike other special districts, the metropolitan special district is designed to serve an area roughly co-terminous with the boundaries of a given metropolis, although in some cases the district is suburban or confined to the central city. 88 Other special districts are overwhelmingly non-urban by location, 89 although some of them include part or all of a metropolitan area within their extensive boundaries. 90

82. See *Jones v. Al Johnson Const. Co.* 211 Minn. 123, 300 N.W. 447 (1941) in which blasting operations of Minneapolis-St. Paul Sanitary District were not protected by governmental immunity and were held to be a private nuisance.

83. 193 Minn. 405, 258 N.W. 583 (1935).

84. 100 Wash. 449, 171 Pac. 254 (1918).

85. For a case expressly denying that metropolitan park districts are municipal corporations see *State ex rel. Koontz v. Board of Park Commrs. of the City of Huntington*, 131 W. Va. 417, 47 S.E.2d 689 (1948).

86. 137 Neb. 871, 291 N.W. 558 (1940).


88. *Tableman*, op. cit. supra note 32, at 60, 61. Author states that of 103 metropolitan special districts surveyed by her, 71 were area-wide, 20 were suburban and 12 were city districts.

89. Of 14,405 special districts only 3,180 touch on standard metropolitan areas, and of these 3,180 districts 1,185 touch only the outlying sections of metropolitan areas. U.S. Cur. of the Census; 1 U.S. Census of Governments: Local Governments in Standard Metropolitan Areas 6 (1957).

Geography aside, metropolitan special districts differ from their country cousins in regard to the number of functions which they assume. Traditionally, the non-metropolitan district has performed but one function and has not taken on additional duties. Among the typical functions of the non-metropolitan district are such activities as land reclamation, fire control, irrigation, and drainage. By way of contrast, metropolitan special districts are quite often multi-functional in scope (although not half as often as their proponents would like). In urban areas, problems of water supply and sewage disposal have often been assumed by the same district. There are other examples along the same line showing the combination under one district of two or more of such urban functions as control of port facilities and air terminals, transportation and rapid transit, air pollution, parks, and regional planning.

Furthermore, metropolitan special districts often have a large number of employees and a complex financial structure whereas the average special district has very modest financial undertakings and limited personnel. Census reports shows that all the large operations conducted by special districts are under the direction of metropolitan special districts, including such well-known governmental units as the Chicago Transit Authority, the Metropolitan Transit Authority (Boston), the Port of New York Authority, the Metropolitan Sanitary District of Greater Chicago, the East Bay Municipality Utility District and the Washington Suburban Sanitary District.

The economic, operational, and geographical factors which differentiate the metropolitan special district from other districts have occasionally led courts to differentiate them legally. Since non-metropolitan special districts are generally located outside of urban areas and perform but one function, they are seldom held to be municipal corporations and often found to be state agencies or quasi-corporate entities performing a purely governmental activity. This has important ramifications in the area of tort liability.

92. Id. at 7, showing that 18% of special districts are for fire protection, 16% for soil conservation and 15% for drainage.
93. See note 91 supra at 31, showing that 144 out of 662 multi-functional units perform both sanitation and water supply services.
94. For specific listing of some multi-functional metropolitan special districts see TABLEMAN, op. cit. supra note 32, at 60-61; BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES, 68 (1957).
95. For example, in 1952 the Chicago Transit Authority had 17,742 employees and revenues in excess of $119,064,000 while in the same year the Port of New York Authority showed an outstanding long-term debt of $241,688,000. U.S. Bur. of the Census: Special District Governments in the United States (No. 33) 3 (1954).
96. Id. at 1-2, showing that 74% of special districts had income of less than $10,000 in 1952; 71% had no long-term debt and only a little over 1% employed more than 100 people.
97. This is the new name for the Chicago Sanitary District. However, the old name has been used elsewhere in the paper because it corresponds to case and statutory references.
The western states, which contain numerous rural special districts, have split right down the middle on whether non-metropolitan districts are immune from tort liability.\(^98\) The case of *Bennett v. Brown County Water Improvement District No. 1*,\(^99\) is a good recent example of the opposing theories on governmental immunity for rural special districts. The majority advanced the thesis that rural special districts are quasi-corporations analogous to the county and thus immune from suit. In addition, the majority distinguished the earlier Texas case of *Hidalgo County Water Improvement District v. Peter*\(^100\) which seemed to limit governmental immunity. The dissent denied the county analogy and asserted that even if it were correct, it would not render the district immune, since the modern trend is to recognize that when any government enters into a proprietary undertaking it must assume tort liability in the performance of such activity.

California, which leans somewhat toward the majority view in the aforementioned Texas case,\(^101\) has not applied this theory to metropolitan special districts. In *Morrison v. Smith Bros.*,\(^102\) the court discussed at great length the well-established California view that rural special districts are public corporate entities performing a state governmental function. After a summation of the semantics on the subject, the court held that municipal utility districts were clearly different from rural districts and were on a par with municipal corporations as regards tort liability.

California has also differentiated between rural and metropolitan special districts for purposes of constitutional construction. For years California courts have wrestled with the problem of whether special districts were municipal corporations within the meaning of the constitutional clause subjecting the property of municipal corporations to tax if it was located outside corporate limits.\(^103\) To settle the cases arising under the clause, the California courts erected a dualistic theory under which metropolitan special districts were distinguished from other districts. The Metropolitan Water District of Southern California was held to be a municipal cor-

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98. The following cases hold special districts immune from suit: *Todd v. Kaw Valley Drainage Dist.*, 109 Kan. 754, 201 Pac. 1096 (1921); *Sherwood v. Worth County Drainage Dist. No. 1*, 298 Mo. 82, 250 S.W. 605 (1923); *Bennett v. Brown County Water Improvement Dist. No. 1*, 153 Tex. 599, 272 S.W.2d 498 (1954).


102. 211 Cal. 36, 293 Pac. 53 (1930).

103. CAL. CONST., art. 13 § 1 (1879).
poration within the meaning of the clause, but rural districts were held to be state agencies immune from local taxation. Recent California cases have obliterated this dichotomy and have classified rural special districts as municipal corporations for the purposes of construing the constitutional provision on tax immunity. The California courts adopted the position that the clause on tax immunity was meant to protect local governments from losing their taxable property and was thus meant to be construed liberally. This eminently sound construction has not, however, resolved the question of the relative status of metropolitan and non-metropolitan special districts, since the California holding was quite limited and represented a departure from the typical western view which is to classify rural special districts as quasi-corporations.

The Governmental Attributes of the Metropolitan Special District

The metropolitan special district is a creature of the state, and its governmental nature must be determined by assessing its degree of dependence on the state. To the extent that a metropolitan special district possesses powers of self-determination, it resembles the average municipality or home-rule county; but to the extent that it remains highly reliant on its creator, it resembles the dependent quasi-corporation. To arrive at the degree of local autonomy possessed by a metropolitan special district, one must look to the terms of its creation and the extent of local control over its continuing operation.

The initiative in forming metropolitan districts is either at the state level under special legislation or at the local level under general enabling legislation. In some instances, as in the case of the Metropolitan St. Louis Sewer District, the initiative has been at the local level under an enabling amendment to the state constitution. Where metropolitan special districts have been formed at the state level, they have almost invariably been the result of special acts of creation. The Massachusetts Metropolitan District Commission, the Baltimore County Metropolitan District,
the Minneapolis-St. Paul Sanitary District,\(^{111}\) the Milwaukee Metropolitan Sewerage Commission,\(^{112}\) the Port of New York Authority,\(^{113}\) the Washington Suburban Sanitary Commission\(^{114}\) and the Metropolitan Transit District\(^{115}\) (Boston) are prominent products of such special legislation. All these listed metropolitan special districts were imposed from above upon the localities involved, and the involuntary manner of their imposition is somewhat incompatible with the concept that metropolitan special districts are analogous to municipal corporations.

The fact that the state has undertaken the creation of a metropolitan special district has not always meant that local sentiment has gone unregarded. Although the Hartford Metropolitan District was the result of a special act,\(^{116}\) the voters in the district were permitted a referendum which allowed for the non-inclusion of dissenting municipalities.\(^{117}\) A similar referendum was used in the Detroit area after the Michigan legislature formed the Huron-Clinton Metropolitan District except that the legislature allowed for the non-inclusion of dissenting counties.\(^{118}\)

Special legislation has not been the sole device used for creating metropolitan special districts, and numerous state laws provide for the creation of metropolitan special districts by the local areas involved. Despite the fact that the Michigan and Connecticut legislatures used special acts to establish metropolitan districts in their largest urban areas, both states have general laws permitting the organization of such governmental entities.\(^{119}\) The enabling acts of Connecticut and Michigan differ from those of most other states in that they include a variety of functional districts within the scope of one act. California, on the other hand, provides separate acts for municipal utility districts,\(^{120}\) metropolitan water districts,\(^{121}\) air pollution control districts,\(^{122}\) and numerous other districts. As a result, the East Bay Municipal Utility District, the Los Angeles Air Pollution Control District and the Metropolitan Water District of Southern California are each formed under different enabling laws. Illinois, which ranks first in number of special districts,\(^{123}\) also has a number of different enabling acts, but the Chicago Sanitary District,\(^{124}\) the Chicago Park District,\(^{125}\)
and the Chicago Transit Authority were products of special legislation of the kind which permitted local ratification or rejection.

For the most part, general enabling acts provide for local initiative in forming a district. This initiative normally takes one of two forms, the voter petition or ordinance of some local governing body. The Ohio Park District requires a petition by a majority of the district voters or an ordinance of some local government. For obvious reasons the latter alternative is more practical in Ohio, but not all states have such stringent petition requirements. The Metropolitan Park District Act of Washington requires only fifteen per cent of the voters, the Port District Act of the same state calls for only ten per cent, and the Metropolitan Sewerage District Act of Wisconsin requires a petition from only five per cent of the voters. The Municipal Utility Act of California goes to the opposite extreme from the Ohio Park District Act and makes initiative by ordinance depend on approval by at least half the public agencies involved while it requires a petition of only ten per cent of the voters in the alternative.

Once a locality has initiated a proposal for the formation of a metropolitan special district, the statutes provide for a variety of ratification devices. Illinois and California have generally leaned toward the popular referendum. Sometimes, as under the Metropolitan Water District Act of Southern California, the referendum is based on a system of concurrent majorities in which each intra-district local unit registers its approval or disapproval as a separate entity. Such a federal type of voting has been commonly used in connections with referendums on metropolitan special district created at the state level. In other instances, for example, the California Air Pollution Control District Act, ratification has been taken out of the hands of the voters and placed in the hands of certain elected local officials. In a somewhat novel provision, the California Bridge and Highway District Act allows for ratification by petition as an alternative to an election. Another unusual device for approving the creation of special districts is the delegation of ratification power to the local judiciary, a method which is used under the Wisconsin Metropolitan

127. Ohio Rev. Code § 1545.02 (Baldwin 1953).
131. Cal. Pub. Util. Code, §§ 11611-11614 (petition of 10% of the voters); §§ 11581-11583 (request by resolution of half or more of public agencies involved).
134. Such was the case in the Hartford Metropolitan District and Huron-Clinton Metropolitan Park District mentioned supra.
135. Cal. Health & Safety Code § 2505. The county board of supervisors both initiates and decides on the creation of a district. This differs from the usual California practice of allowing popular vote.
Sewerage District Act\(^\text{137}\) and the Ohio Park District Act.\(^\text{138}\) The latter delegation of power was challenged in a constitutional suit.\(^\text{139}\)

Even though local voter participation is often required at the initiation or ratification stage, metropolitan district officials are seldom directly answerable to the electorate once the district has been created. A great many metropolitan special districts are headed by appointed directors. In some instances, the governor has complete control over the appointive process as in the Massachusetts Metropolitan District Commission,\(^\text{140}\) the Port of New York Authority,\(^\text{141}\) and the Hartford Metropolitan District.\(^\text{142}\) In other metropolitan districts, such as the Metropolitan Transit District (Boston)\(^\text{143}\) and the Chicago Transit Authority,\(^\text{144}\) the governing boards are composed of a pseudo-federal mixture of mayoral and gubernatorial appointees. Still more commonly, the power of appointment is wielded at the local level.

As a gesture to localism, state legislatures have often left the selection of metropolitan district directors up to local officials. For example, the mayor of Chicago can appoint the commissioners of the Chicago Park District;\(^\text{145}\) in Ohio county probate judges have power of appointment over metropolitan park commissioners;\(^\text{146}\) and in Kentucky the members of the board of the Louisville and Jefferson County Metropolitan Sewer District are appointed by the mayor of Louisville (3) and the county judge (2).\(^\text{147}\) More frequently, however, the local appointive power is given to city governing bodies, as in the case of the Metropolitan Water District of Southern California,\(^\text{148}\) or to county governing bodies, as in the Golden Gate Bridge and Highway District.\(^\text{149}\) These last two methods of appoint-

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\item 138. Ohio Rev. Code § 1545.04 (Baldwin 1953).
\item 141. N.J. Laws 1930, ch. 243; N.Y. Laws 1921, ch. 154, § 3. Half the appointments are made by the New Jersey governor and half by the New York governor.
\item 142. Special Laws of Conn. 1933, Sp. No. 347. Actually, the original act establishing the Hartford Metropolitan District allowed for election of commissioners in two "forms," one form consisting of a commissioner from each city in the district and one form consisting of commissioners to be chosen on an at large basis in staggered terms. However, the election feature was postponed and finally eliminated, except that the district voters still can force an election by means of an onerous petition. Connecticut governors have, therefore, always staffed the whole commission, subject to the limitations of the original act.
\item 144. Ill. Ann. Stat. ch. 111.2/3, § 320 (Smith-Hurd 1934). John Bollens has commented on the unnecessarily complex nature of this appointive process (Bollens, op. cit. supra note 94, at 90) which involves the governor, mayor of Chicago, The Illinois State Senate and the Chicago City Council, not to mention the geographic limitations it imposes on the governor's choice.
\item 146. Ohio Rev. Code § 1545.05 (Baldwin 1953).
\item 149. Cal. Streets & H'ways Code § 27121.
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ment occasionally have an added feature in that they permit the larger localities to appoint more representatives.\textsuperscript{150}

Another concession to localism has been the designation of city and county officials as ex officio directors of metropolitan special districts. This system has certain merits in that it moderates the friction which often results from overlapping governments and places responsibility on elected officials without creating an unwieldy new group of elective offices.\textsuperscript{151} County governing bodies comprise the ex officio leadership of the Los Angeles Air Pollution Control District\textsuperscript{152} and the Baltimore County Metropolitan District.\textsuperscript{153} Also the mayors of St. Paul and Minneapolis are ex officio members of the governing body of the Minneapolis-St. Paul Sanitary District,\textsuperscript{154} but the ex officio method is not common. It is especially rare for a state official to be an ex officio member of a metropolitan district board or commission although the Attorney General and the Treasurer of the Commonwealth of Pennsylvania are ex officio members of the 16-man Delaware River Port Authority Commission.\textsuperscript{155}

The last important method of electing metropolitan special district officials is the device of direct popular election. The democratic method has been used in the Chicago Sanitary District for years,\textsuperscript{156} and it is also employed in a number of other districts, including the Sacramento Municipal Utility District,\textsuperscript{157} the East Bay Municipal Utility District,\textsuperscript{158} the Portland (Me.) Water District,\textsuperscript{159} the Omaha Metropolitan Utilities District,\textsuperscript{160} and the Seattle Port District.\textsuperscript{161} Some of the foregoing districts employ a modified ward system in which some or all of the directors or commissioners are nominated from specific wards but run at large.\textsuperscript{162} This guarantees that each ward will have representation. The Portland Water District uses

\textsuperscript{150} Both the Metropolitan Water District of Southern California and the Golden Gate Bridge and Highway District accord added representation to the larger local governments in the district, but the former district establishes representation by relative values of taxable property while the latter district uses a population scale.


\textsuperscript{152} Cal. Health & Safety Code \$ 24220.

\textsuperscript{153} Maryland Acts of 1924, ch. 530 \$ 2.

\textsuperscript{154} Minn. Ann. Laws \$ 445.04 (1954).


\textsuperscript{156} The Chicago Sanitary District was created in 1889, although it was not really activated for several years thereafter. This district has a strong democratic tradition which, unfortunately, has been marred on occasion by political scandals. For election provisions see Ill. Ann. Stat. ch. 42, \$ 322 (Smith-Hurd 1957).

\textsuperscript{157} California Pub. Util. Code \$ 11648.

\textsuperscript{158} Ibid.

\textsuperscript{159} Maine Private and Special Laws of 1907, ch. 433 \$ 9.

\textsuperscript{160} Neb. Rev. Stat. \$ 14-1003 (1943).

\textsuperscript{161} Wash. Rev. Code \$ 35.61.050 (1951).

\textsuperscript{162} The California Municipal Utility Districts and the Seattle Port District use this system.
a more clearly federal system in which constituent cities elect members to the board.163

Although the average metropolitan special district lacks the popular elective feature of municipalities or counties, it possesses many of the attributes of the more traditional units of government. Almost without exception, metropolitan special districts have the power to acquire, hold, and dispose of property and to exercise eminent domain. Such grants of power have not gone unchallenged. In People v. Chicago Transit Authority,164 it was unsuccessfully argued that the statutory power of the Transit Authority to acquire private transportation lines unconstitutionally denied equal protection of the laws to private utility companies. In State v. Metropolitan St. Louis Sewer District,165 the court upheld the delegation of condemnation power to the district, stating that such power was virtually indispensible to the performance of its function. However, in State ex rel. Mower v. Superior Ct.,166 the Washington Supreme Court refused the power of eminent domain to a metropolitan park district on the ground that the legislature had failed to establish a statutory procedure for the taking of property by park districts, despite constitutional language requiring such protection for landowners.167

There is no more important characteristic of governmental sovereignty than the tax power, and with the exception of government-enterprise units, this power is always possessed by metropolitan special districts. In addition, they normally have such standard corporate powers as perpetual succession and possession of a seal. However, metropolitan special districts often lack the power of self-dissolution.168 This question of dissolution of special districts is by no means an abstract point since local antagonisms within a district can lead to attempted withdrawals,169 and this question deserves more legislative attention than it has received.

Another normal characteristic of the average municipal corporation is the possession of a police force. This particular attribute is found to a limited extent in some metropolitan districts,170 and where the legislature has delegated power to maintain a police force, it has usually been able to confer on special district policemen the same power possessed by other

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163. The system is, however, weighted in favor of more populous Portland.
164. 292 Ill. 77, 64 N.E.2d 4 (1945).
165. 275 S.W.2d 225 (1955).
166. 43 Wash.2d 123, 260 P.2d 355 (1953).
167. Wash. Const. art. 1, § 16.
168. Bollens, op. cit. supra note 94, at 20. This normal feature of municipal government is usually provided for in California, but Illinois has been quite delinquent in this regard.
170. Metropolitan park districts usually have a police force, but sanitary and sewer districts do not have as much need for them. The Chicago Sanitary District has abandoned its police force. Jones, Metropolitan Government, 96 (1942).
policemen or constables within the state, subject, of course, to the geographical limits of the district. Strangely enough, urban areas in America have been reluctant to institute general-jurisdiction metropolitan police forces although the police function would seem to be well adapted to such integration. As a result, such police forces as exist in metropolitan districts are not large and are designed for enforcing laws peculiarly relevant to the district function.

The power to annex, so common to municipalities, is also possessed by a number of metropolitan special districts. The general enabling acts which confer the power of annexation usually place the initiative on the territory to be annexed. Consent to the proposal is then usually sought from the governing body of the annexing territory, and under some laws additional approval must be given by the voters of the territory to be annexed. Under the Ohio Park District Act judicial ratification is necessary after approval of the annexation petition by the park commissioners. In districts organized along federal lines annexation to the district may occur indirectly through annexation to a constituent city. However, the greatest modern expansion of a single metropolitan special district has not occurred under general enabling laws permitting annexation. The Chicago Sanitary District, which has experienced great growth, has acquired its present size through a series of special annexation acts by the Illinois Metropolitan District Commission.

171. For example, N. J. STAT. ANN. 32:2-25 (1940) conferring such power on Port of New York Authority policemen in New Jersey; CAL. PUB. RESOURCES CODE, § 5561 conferring such power on regional park district policemen; MASS. ANN. LAWS ch. 92, § 61 (1954), conferring such power on policemen employed by the Massachusetts Metropolitan District Commission.

172. Massachusetts law permits policemen of the Metropolitan District Commission to exercise jurisdiction outside of the district on the property of the water and sewage districts located there. MASS. ANN. LAWS ch. 92, § 61 (1954).

173. As an example, the Port of New York Authority Police are particularly charged with the policing of bridges, tunnels and entrances thereto. N. J. STAT. ANN. 32:2-25.

174. This is true in annexation in Ohio metropolitan park districts (OHIO REV. CODE § 1545.15 (Baldwin 1953)), Washington metropolitan park districts (WASH. REV. CODE § 35.61.250 (1951)) and California regional park districts (CAL. PUB. RESOURCES CODE § 5573). However, the California Municipal Utility District Act permits the annexing body to take the initiative when the territory to be annexed is within the district boundaries but not within the district. CAL. PUB. UTIL. CODE § 13652.

175. See, e.g., Ohio Park District Act (OHIO REV. CODE, § 1545.15) (Baldwin 1935) and the California Municipal Utility District Act (CAL. PUB. UTIL. CODE, § 13824).

176. See, e.g., the election provisions of the California Regional Park District Act (CAL. PUB. RESOURCES CODE, § 5576) and the election provisions of the Metropolitan Park District statutes of Washington (REV. CODE OF WASH. § 35.61.270).

177. OHIO REV. CODE § 1545.15 (Baldwin 1953). As a matter of fact, the commissioners of the Cleveland Metropolitan Park District have turned down numerous requests for annexation to the district. Bollens, Special District Governments in the United States, op cit. supra, note 94 at 73.

178. The Municipal Utility Districts of California, which are quasi-federal in makeup, automatically include within the district any territory annexed to a member city. CAL. PUB. UTIL. CODE, § 13991.
legislature, usually accompanied by referendums in the territory to be annexed.\textsuperscript{179}

**Conclusion**

The metropolitan special district has no exact governmental counterpart and is, therefore, unique. Its uniqueness demands a legal and governmental theory of its nature which takes into account its peculiar attributes. This theory must be cohesive and far-sighted, so as not to impair the development and future political utility of the metropolitan special district. Moreover, this theory should be sufficiently flexible to transcend the variety of minor differences between districts. It is submitted that no such theory has been advanced by the courts and that those theories so far put forward contain defects which might impede the future development of metropolitan special districts.

It is unfortunate that the courts have drawn such broad analogies between metropolitan districts and municipal corporations or between metropolitan districts and state agencies. Actually, the metropolitan special district falls in neither category, and theories which ignore its special characteristics can lead to future legal and constitutional problems. When courts, even with the best intentions, use a dubious theory, they avoid an immediate obstacle at the risk of creating more serious obstacles in the future.

The best theory of the metropolitan special district is that which recognizes it for what it is, a quasi-municipal corporation. Conceived of in this light, its juridical status need not be unduly tortured to make it conform to its governmental nature. While it is true that the metropolitan special district is quite similar to the average municipal corporation and may be so classified in the majority of cases, the courts must adopt a theory which leaves them leeway to distinguish metropolitan special districts from municipal corporations without at the same time resorting to analogies which deny the substantial similarity of the two governmental forms. It is submitted that the courts can most satisfactorily deal with the metropolitan special district if they view it as a quasi-municipal corporation.

\textsuperscript{179} ILL. STAT. ANN. ch. 42, §§ 373-380, z 18 (Smith-Hurd 1934) for a list of special annexation acts.