

The Structure of County Government

GENERAL BACKGROUND

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Close parallels exist between the organization of the state and county governments. According to Kramer in *Essentials of Texas Politics*, “The decentralized executive found at the state level is reproduced at the county level in the commissioners’ court and the semi-independent county agencies.”¹ County government under the present Constitution was designed to serve a predominantly rural population. Its purpose was to implement rigid policies rather than involvement in economic, social and welfare programs.²

History suggests that “fear of government power” and “distrust of government officials” were major factors incorporated into the design of the Constitution of 1876. The idea was to implement a “systemic remedy,” to constrain power. The remedy utilized by the framers was to split up local government authority among a number of independently elected officials.

Article III, Section 1, Texas Constitution, provides in part: “The Legislative power of this State shall be vested in a Senate and House of Representatives....” This grant to the Legislature is one of plenary power—full and complete in all aspects not prohibited by the Texas Constitution or the laws derived therefrom. Accordingly, the Texas Constitution is a limiting, not a granting document.³ Texas courts along with the Dillon decision effectively eliminated any claims to the right to self-govern. *

The authority granted to counties is strictly construed since the county is viewed as an instrumentality of the state.⁴ The inclusion of Section 1 [Counties as legal subdivisions of the State] in Article XI of the Texas Constitution [Municipal Corporations] raised the question of whether counties were municipal corporations. The Supreme Court in the case of *Bexar County v. Linden* 1920, held counties to be an “instrumentality of the state”, not municipalities.

The county is a political subdivision of the state.⁵ The legislature has the power to create counties.⁶ Although separate legal entities which can be sued and hold property, counties remain subject to the action of the state legislature.

In 1912 the Home Rule Amendment⁷ was ratified and cities were allowed to adopt their own charters by a majority vote of the city voters. “Under the home-rule amendment, ...it is necessary to look to acts of the Legislature, not for grants of power ... but only for limitations of their powers.”⁸

In 1933, “county home-rule” passed both houses of the Texas legislature and was approved by the electorate. Any county having a population of sixty-two thousand or more could adopt a Home Rule Charter. The amendment allowed the “continuance of a county commissioners court as now constituted, which shall be elective, and service therein shall be upon such qualification...as may be fixed by any such charter.”⁹

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No county ever initiated a home-rule Charter. In 1960 the Texas Legislative Council¹⁰ sought to identify provisions of the State Constitution that were considered to be “deadwood.” In 1969, by Acts of the 61st Legislature, the county home rule section of the Texas constitution was repealed as “deadwood” and House Joint Resolution No. 3 (a constitutional amendment) was approved by voters at an election held August 5, 1969.¹¹

In recent legislative sessions Bexar and El Paso counties have devoted considerable time and resources toward restoring the “deadwood provision” that lay dormant for thirty-six years. Over the years, a number of states have responded to the restricted authority of counties operating under Judge Dillon’s rule by adopting an alternate form of government—home rule. Presently only a few states, including Texas, operate under the old Dillon Rule.¹²

The concept of “Home rule” is not easy to explain. “Charter home rule” and “home rule” are often used interchangeably, but they are distinguishable. Generally, “home rule” permits local self-government over matters of community interest and concern.

The most common form of “home rule” allows voters to select a type of government among several structural options that are set out by statute and known as ‘optional forms.’¹³ Such forms may include the replacement of traditional elected posts with appointed staff or department chiefs. “There is no compelling evidence to support a conclusion that an appointive system is more effective than one operating with elective positions.”¹⁴

On the other hand, “Charter” authority arises from the state constitution and confers broader power. “A charter is the county’s ‘little constitution’ and...powers typically fall into three operational dimensions: structural, functional and fiscal. Reforms under a ‘charter’ are often adopted in all three domains, whereas home rule counties without ‘charters’ have adopted reforms in the structural domain only.”¹⁵

“Once counties become urban, they are no different from cities in the need for individual treatment. In other words, many counties today (1977) are where many cities were in 1912—in need of home rule.”¹⁶ By 1996, 2,356 counties, almost 80% of county governments, had adopted some variation of home rule authority. Over 125 counties have operated under a charter for several decades.¹⁷

The states of Florida, Maryland and Oregon have more counties with “home rule” than any other states. When comparing the “home rule” counties with the “non-home rule” counties in the above states it was determined there is only one real difference. “Home rule” counties are more capable of lobbying and obtaining awards of federal money and grants than non-home rule counties. While home rule counties are bigger and have more authority, they are better at lobbying for money but do less with it than ‘non-home rule’ counties.¹⁸

Tanis Salant, co-author of “County Charter Government in The West,” offers a very resourceful observation regarding home rule powers: “An explicit grant of home rule powers, supposedly the heart of the charter concept, appears primarily in preambles, not in legal provisions. Further charters do not provide much opportunity for expanded fiscal or functional powers. What counties need most, arguably, are fewer responsibilities or greater resources, but due to state law these two dimensions of governance are rarely addressed in charters. This suggests that charters are more a tool for management than a guide for the future.

PLURALISM

The structure of county government, in part, has much deeper roots than those based on the agrarian farmer's perceived distrust of a powerful government and reaction to widespread corruption. It is also a by-product of a philosophy that underscores competing interests among the participants. The method is called "pluralism."

Pluralism developed, especially in Europe, as an assault upon absolutism, sovereignty, and centralized state authority. In his article, *The Technologies of Freedom*, Robert Hormats finds that "As long as communication could be controlled within national borders, governments were able to impose their own messages and prevent citizens from receiving outside information. The globalization of information became a force for ending the Cold War. Today, powerful technologies have speeded up the march toward political pluralism by equipping hundreds of millions of people with ideas and facts once controlled by the political elite."¹⁹

"[In America]...the labor union, the civil service with its lifetime tenure, the hospital, the university...each of them...is a special interest...fighting for its autonomy.... not one of them is concerned with the common good...this pluralism threatens to destroy the capacity to make policy."²⁰ (*The Millennium: The Rise, Fall, and Return of Pluralism* by Peter Drucker) These entities offer diversity through their competing interests. The result can be a robust country or a stronger county, but the method can also invite obstruction. The challenge is to preserve the diversity of authority and at the same time restore and retain the unity of the polity, i.e. keep the power divided all the while maintaining the willingness to work together for the common good.

Pluralists emphasize the merits of exposing individuals to conflicting ideals and interests so that the degree of influence exercised by large groups is minimized. "It is best to design political institutions which allow for the expression and competition of a plurality of ideals and interests."²¹ Pluralism has been criticized for failing to recognize that, notwithstanding its principles, a pluralistic system is either controlled by the state or by a small number of powerful interests or a dominant class. Lack of accountability and consensus in administering local government are among the more frequent complaints lodged against a county pluralistic system (commission form of local government).

Any system of local government, whether pluralistic or otherwise, will be subjected to political pressure. Special interest groups drive and control the outcome of any government system. These forces are inherent within any system—whether it is business, the consumer, the elderly or the disadvantaged, they are all "special interest groups."

DECENTRALIZATION ON THE LOCAL LEVEL

A Special District is a species of "district." It is one of the territorial areas into which an entire state...or county, municipality or other political subdivision is divided, for judicial, political, electoral, or administrative purposes.²² (*Black's Law Dictionary*, 5th Edition) The Texas Constitution authorizes the creation of a "district" for certain purposes such as fire fighting, improvement of rivers, flood control and a plethora of other activities.²³

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Historically, suburban residents became anxious to obtain the conveniences of essential services such as water, sewage treatment and good roads. Consequently they began to use special purpose districts to provide their own infrastructure and thereby turned their backs to centralization. County governments stepped in and took a more modern role of providing a full service government.

As special purpose districts reach their tax rate limitations,²⁴ the battle among local governments for more authority and revenue will intensify. Not all special districts have a constitutional limitation on their tax rates or bond amounts. In 1987 Texas voters approved a constitutional amendment authorizing jail districts with no rate ceiling.²⁵

These creatures surface as a result of growth demands, limitations on revenue, legislative preferences and local government inaction. They provide a “quick fix” but often burden a few citizens with the task of financing improvements that may benefit a much larger area.²⁶ (*Counties in Transition: Issues and Challenges* by Robert Thomas)

Special districts have frustrated opportunities for counties to increase their authority and revenue. Since 1917, the Texas Constitution has authorized these expedient methods of financing services. There is no doubt that these mechanisms provide a speedy remedy for pressing needs and serve very laudable purposes in a micro sense. Collectively, however, special districts have contributed to the public’s confusion by adding more boards, trustees, and taxing units together with all the ancillary administrative baggage that goes along with these little multi-headed monsters.²⁷

VARIOUS OBSERVER’S COMMENTS ON COUNTY GOVERNMENT

The “cookie cutter” or “one size fits all” criticism of county government structure is fairly commonplace. “Harris County, the most populated metropolitan county in Texas, and Loving County, the state’s least populated, are separated by different geography, culture and politics. But the two counties share a century-old political system struggling to solve 20th century problems. ‘It is a forgotten government,’ If they [counties] want to respond to urban problems, they need to get enabling legislation from the state.”²⁸

Allegations of waste and inefficiency are frequently made.²⁹ Critics of county structure have called it a “horse and buggy” government and the “Dark Continent of American politics.”³⁰ Fragmented systems, some contend, interfere with checks and balances. Yet, the structure of county government itself is often cited as an inherent “checks and balance” system. The foregoing suggests that clearly there is a difference of opinion as to what constitutes a “checks and balance” process.

“When county officials achieve a consensus it is a remarkable and positive thing, but when they don’t, counties face gridlock.”³¹ On the other hand, complaints of gridlock are common at every level of government. According to George Will of the Associated Press “Gridlock is not a problem, it is an American achievement, an ingredient essential to the health of a democracy and to the counter balancing systems that quell the abuse of power.”³²

“Some degree of gridlock emerges whenever frustrated government leaders choose to invoke it. All systems are vulnerable to abuse because they are dependent, to some extent, upon the good faith of their principals. Gridlock even occurs on the national level when Congress

authorizes emergency budget measures arising out of executive and legislative standoffs.”
[Source, Carey Boethel, T.A.C.]³³

“Though it can be improved, democratic government has inherent limitations. Nothing can make every government activity a paragon of efficiency. There are systemic reasons that prevent it. Governments should only do what they have to do because, with few exceptions, public bureaucracies cannot function as efficiently as the private sector.”³⁴ “Public management is not an arena in which to find big answers; it is a world of settled institutions designed to allow imperfect people to use flawed procedures to cope with insolvable problems.”³⁵ [Source, Bureaucracies, James R. Wilson]

Gridlock is prevalent within our cities: Chicago, with its 50-member council, each representing a separate political sector; Cincinnati, a city mired in neighborhood rivalries; and Dallas with its court ordered, fourteen-member council. “[Dallas]...is a community in which economic decisions are turned upside down to see what they do for each neighborhood and political enclave...[a council] that may never get around to doing much about ...the squalor of life in its inner city.”³⁶

“Los Angeles government—think of the city as a big bus which is divided into sections with different constituencies like labor, council, mayor, interest groups and others, all with their own emergency brake. Any passenger can bring the bus to a complete stop at their individual will.”³⁷

Even the legislative process in Texas was structured to frustrate the passage of bills. Despite its limitations, it is the preferred choice over a “bill factory.” Evidently, some of the American people want compensating features in government—a Republican Congress vs. Democratic President (a practical balance). “Is a democratic government economical? One would find public expenses in a democratic government considerably greater than an absolute monarchy.”³⁸ “Too many people expect wonders from democracy when the most wonderful thing of all is just having it.” (Walter Winchell)

ARE WE STRUCTURALLY SOUND?

“The current constitution is now an obstacle rather than a framework for efficient government.”³⁹ [Dallas morning news] “A possibility for improving the effectiveness of local governance is a serious overhaul or replacement of the cumbersome 1876 Texas Constitution.”⁴⁰ HJR 1 & SJR 1, both of which failed during the 76th Regular Session, sought a wholesale change to the Constitution of 1876.

A complete revision is a “hard sell” to the citizens of Texas. The Texas Constitution of 1876 has never been replaced. The work of the Texas Constitutional Convention of 1974, the most recent comprehensive reform effort, was rejected by the voters in 1975. “The convention experience was like reading a Russian novel, painful and arduous, with everyone dying at the end.”⁴¹

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An “incremental approach” (e.g. a single “Article” in one session) generates less opposition. Also, foregoing a revision of the more poignant Articles, such as the Bill of Rights, reduces opposition. The House Select Committee on Constitutional Revision is presently measuring the public’s perception of the need for revision of Articles 3 (Legislative Department) 5 (Judicial) and 16 (General Provisions).⁴²

In July 1998, former state senator, John Montford stated, “Texas needs a new constitution. It is one of the longest in the nation with some 80,000 words, many obsolete and archaic. The Governor has no real appointment power to implement his policies through an executive Cabinet. The judicial election process needs to be reformed so we can take campaign contributions out of the equation and thereby let our jurists do their work and be freed of the appearance of improprieties.”⁴³

Some government leaders are frustrated with the existing Constitution because of its limiting features. For example: the Governor wants more executive power; the Legislature wants more authority; and the Judiciary contends it needs a different selection and retention process.

Special interests groups, presently secure under the Constitution, will be reluctant to acquiesce in a complete overhaul. Incremental revision (Article by Article) of the Texas Constitution may reduce such risks. “State Constitutions tend to reflect the concerns of people with vested interests, who prefer the ‘security blanket’ of constitutional inclusion to the insecurity of being left at the mercy of the legislature with changing party alignments and political persuasions. Constitutions, like all laws, are political.”⁴⁴

“All political power is inherent in the people, ...they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.”⁴⁵ The prescriptive formula for amending the constitution is important because of the far-reaching effects the governing document carries. In Texas, constitutional amendments must carry a 2/3rd record vote in the House and in the Senate and a majority of the votes cast by voters eligible to vote in a statewide election.⁴⁶

Idaho and Mississippi require a two-thirds majority vote in each county, if counties petition to consolidate. Changing the “county seat” in Illinois and New Mexico requires three-fifths of those voting in a countywide referendum, whereas Kentucky, Missouri, Oklahoma, South Carolina, Utah, California and Louisiana constitutions call for two-thirds.⁴⁷ It would be difficult to ignore the mandate of a two-thirds majority of each jurisdiction voting on an amendment to a constitution.

Counties in Texas have very limited ordinance-making authority. Examples include: restricted subdivision regulation; sexually oriented establishments; finance of economic development activities; preparation for disaster and emergency management plans; solid waste disposal; flood plain development; airport zoning; and participation in regional planning on issues such as air quality.⁴⁸

Flexibility in structure, broad vested authority, ordinance-making power, strength of character and the resolve to improve by the members of the governing board, a spirit of intergovernmental cooperation and the services of a good, professional manager are features being promoted in a growing number of jurisdictions. The practicalities of assembling this kind of model are much more difficult than fashioning the model.

THE COUNTY MANAGER

...[C]ounties do not necessarily have to have a charter in order to improve management practices.”⁴⁹ James H. Svava, addresses the challenge to leadership efforts for county officials operating within the traditional plural executive, commission form of government: “The structural conditions in counties have impeded strengthening leadership...political partisanship, conflict among officials by virtue of their independent status and time to exercise leadership is consumed by administrative duties and fulfilling mandates. In counties with a county manager, these county governments do not appear to be highly fragmented despite their structure.”⁵⁰

In Mississippi, during the mid-1980s there were roughly 50 convictions of county commissioners involved in financial kickback scandals. The Legislature, under the direction of the Governor responded with structural reform by replacing the old district system with a county manager form of government. The governor and the legislature mandated, in forty-eight of the eighty-two counties, reform of local government road operations by ditching the old district system and replacing it with a form of county manager government.”^{51 52}

With its structure remaining relatively unchanged, county government leaders question if the system can sustain itself in meeting the challenges of the new millennium. In the process of examining these issues, observers look with substantial interest focusing on city-county consolidation, functional consolidation, home rule, and innovative management ideas.

QUESTIONS

1. *Is the present structure justifiable in meeting the challenges and demands of the twenty-first century? Should the system be revised or replaced?*
With few exceptions, the structure of county government in Texas has remained relatively static over its 125-year history.
2. *How should we go about our responsibility to examine whether there is a better way to deliver county services?*
“...There are powerful forces at work to reduce costs, improve the quality of products and services.”⁵³ The forces of change, whether good or bad, are relentless. In Maricopa County, Arizona, “...anybody with a Web browser and access to the Internet can conduct a title search for free—if they visit the office, customers have to pay for copies.”⁵⁴ “If it ain’t broken, don’t fix it.” “If it ain’t broke, fix it! Because the best time to fix something is before it’s broken.”⁵⁵ “If it is fixed, don’t break it.”⁵⁶
3. *Which services should local government render?*
4. *Is there a substantial benefit to be realized from a more uniform and less flexible array of governmental services?*
5. *In other words, should counties only perform mandatory services in order to simplify and make government more uniform?*
6. *Does pluralism serve a genuine purpose in local government?*

With its structure remaining relatively unchanged, county government leaders question if the system can sustain itself in meeting the challenges of the new millennium.

7. *Are there pluralistic alternatives to county government that would reduce disputes among officials and minimize gridlock?*
8. *Is competitive decision-making and debate among the commissioners court members a wholesome feature of government?*
9. *Is a stronger county government system needed?*
Consider the following: (1) Spreading urbanization and growing populations; (2) Residences and industrial plants built in areas not adjacent to existing cities which are in need of urban services; (3) Traditional urban services (water, fire protection, land use control, etc.) being increasingly demanded by rural populations; and (4) Increasing evidence of a need for a viable governmental
10. *Is there still a legitimate concern for the potential abuse of centralized authority?*
Factors that are cited as working against the development of a stronger and more flexible county government in Texas have included: fragmented organization, inflexibility of the system, low and rigid tax limitations, dependence upon specific grants of authority, and “relative absence of professionally trained leadership and staff.”⁵⁷
11. *How can we best deal with this dilemma?*
Flexibility in government, however, is often interpreted as a “structural threat.” Local government, in order to meet the needs of modern society and the growing demands from the rural areas for more urban-like services may need flexibility. Flexibility in structure appears to be the only viable way of dealing with the unique and diverse regions of our state.

END NOTES

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- 6 Texas Constitution, Article IX Section 1.
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* The Dillion Ruling held that local governments are subject to the will of the state legislature. This means that local governments can do only those things they are specifically empowered to do by their legislature.

The views expressed in this document are for discussion purposes and do not represent the views and/or opinions of The Texas Association of Counties, any Texas County represented by a PAG member, or any Texas County Officials Association.

Response Form

In order for the PAG to develop a county policy statement on this discussion paper, we need your input. Please take a moment to complete the following questions and submit your response to us by July 20, 2000.

If additional space is needed, please attachment additional sheets to this document. Thanks in advance for your suggestions and comments.

- 1. *Is the present structure justifiable in meeting the challenges and demands of the twenty-first century? Should the system be revised or replaced?*

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Name

County

Title

Date