MICHIGAN STATE UNIVERSITY EXTENSION

Intergovernmental Cooperation in Michigan: A Policy Dialogue

White Paper A

Consolidation and State Boundary Commission

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BOUNDARY ISSUES IN MICHIGAN

Michigan has a complex set of municipal units: 83 counties, 1242 townships, and 533 cities and villages. The roots of this system of municipal government are found in the Northwest Ordinance enacted by the Continental Congress in 1785 and amended by the U.S. Congress in 1787. The ordinance was adopted to provide a plan for the organization of the territory. The territory consisted of the lands north and east of the Ohio River, east of the Mississippi River, and south of the Canadian border. The lands eventually were organized into five states—Ohio, Indiana, Illinois, Wisconsin, and Michigan.

Over the decades, as the populations moved west and settled in these states, the ordinance provided for their organization as states. For Michigan, acceptance of its constitution occurred in 1837. Two years earlier, 1835, state leaders sought to have the state adopt a state constitution but Congress would not recognize the document because of the dispute over the southern boundary of Michigan; a dispute that came to be known in Michigan as the Toledo War.

The dispute arose as a result of the ordinance's specification that the southern boundary of Michigan would extend due east from the southernmost point of Lake Michigan until it reached Lake Erie. That line left the mouth of the Maumee River in Michigan rather than Ohio and left the Indiana region without contiguity to Lake Michigan. When Congress modified the boundary by assigning the southern strip to Indiana and Ohio and assigned the western portion of the Upper Peninsula to Michigan, Michigan's constitution was approved and adopted in 1837.

As these states organized and as the county populations grew, the counties gradually organized. As many of the new settlers traveled down the Erie Canal (opened in 1825), they exited in deep southeast Michigan. Many then ventured west and settled in the areas that would constitute the lower two tiers of counties. Several of the counties in Michigan were organized before the state constitution was accepted. Such was also the case with some townships.

Townships began organizing as early as 1790. In states such as New York, New Jersey, and Pennsylvania townships were largely organized in the 6 x 6 mile areas surveyed in accordance with the federal survey requirements. In Michigan, these 36 square mile areas were to become the basic layout for the local governments in the rural and lightly populated areas. Section 16 of each township was designated as the "school section", the lands of which were to be sold and the proceeds delivered to the state to finance the state's public school system.

Early County and Township Roles

If one considers the nature of distant communication and the nature of travel during the time the state was being organized, it is easy to imagine what difficulty a state would encounter as it sought to carry out state government responsibilities. With communication dependent on the delivery of paper documents and delivery by horseback, a state could barely execute the functions the constitution assigned to the people. The organization of

county and township governments gave state government comprehensive coverage as the units formed a two-tier system. Both the counties and townships provided a network through which the state could execute its policies and have them administered.

The early responsibilities of counties and townships were then related to carrying out state policies such as administering a court system, collecting taxes, law enforcement, managing land ownership, organizing a road system, administering elections, and numerous other such functions. Some of these functions addressed county and township needs but they were also basic to achieving state goals.

Early constitutional and statutory provisions specified the organizational structure, duties, and powers of the counties and townships. They were organized under the then prevailing values of Jacksonian democracy. Qualifications for holding elective office were minimal and the terms were short, sometimes only a year. Township supervisors eventually were elected to two-year terms and constituted the majority of the county boards of supervisors. Cities selected their own members to the county board.

Legislative Governance of Cities

The state constitution and state laws maintain a tight rein on county and townships even to the present day. The legislature also had a tight grip on cities for the first seven decades of the state's existence. As the population expanded in communities around the state, residents would seek new authority to address the growing needs. The legislature responded to these requests by permitting them to organize as villages and cities. The legislature was then permitted to adopt local legislation by a simple majority and so could craft the city and village "charters" on an individual basis. In some instances, legislators would craft the rules to fit the wishes of the "locals." In other cases, a charter had to be more to the liking of an individual legislator.

The practice of legislatively crafted charters continued almost until 1900. About that time, the legislature began to realize that the charter development and amendment processes generated a great deal of busywork and minimal political benefit. With that realization, the legislature adopted the Fourth Class City Act and the General Law Village Act. Each of these permitted a community to organize a city or a village under the terms specified in the acts.

The Home Rule Concept

The two general law statutes may have represented some progress but as the concept of "home rule" and the values of Progressivism became more popular, the "remedies" offered by the legislature were not the solutions some were looking for. As the 1908 Constitutional Revision Commission deliberated, one of the key changes was the issue of "home rule" for cities and villages. At this point only 5 states had included provisions for municipal home rule in their constitutions. The delegates debated whether home rule provisions should apply only to cities and villages or to counties and townships as well**.** A majority finally agreed to extend it to cities and villages only.

The municipal home rule provisions essentially eliminated the power of the legislature to adopt special or local acts and directed the legislature to adopt a home rule law for both cities and villages. The acts enabled the units to organize and prepare their own charters to specify matters such as whether council members would be elected at-large or from districts, whether elected officials would be partisan or non-partisan, the length of their terms, the powers of the mayor, the presence of a city/village manager, the maximum tax rate, etc. The state attorney general was required to review such charters before residents voted on them, but otherwise the state exercised no other oversight.

By 1960, roughly 50 years under the new constitution, some 219 cities and 291 villages were in existence. Of these cities, 186 were home rule cities but only 51villages had gone through the home rule charter process. Of the formal villages, 240 were organized under the 1895 General Law Village Act.

The home rule city and village acts have been amended numerous times in the nearly 100 years of existence. However, the provisions adopted in the 1908 constitutional convention set the pattern for city, village, townships, and county governments that operate today.

Changed Social, Economic, and Physical Environmental Changes

Much of the change that we experience today resulted more from the social, economic, and physical environment changes that have developed over the years. Local government powers remained rather stable during the 40 years leading to World War II. Perhaps the most significant change was the establishment of the county road commission and the termination of township responsibilities for local roads.

The major changes in the social, physical, and economic environment occurred in the years following the end of World War II. During the Great Depression of the 1930s and the war years of the 1940s generated little demand for urban growth. The economic conditions and the fighting of the war delayed family formation but led to a dramatic demand for housing and economic development when the war ended and new families were formed. Most of the cities were not prepared to cope with these demands and, as a result, the response to the demands led to significant suburbanization in the townships adjacent to the central cities.

Other factors also brought about change in the suburban areas. The manufacturing industries, now turning from the challenges of manufacturing war materials to producing domestic products contributed to the expansion of new facilities in new areas. Such development was facilitated by the growing use and affordability of the automobile and need for an improved system of roads and highways. President Dwight Eisenhower's advocacy of a "national defense transportation system" extended the suburban growth patterns as the national freeway system began to be constructed.

Implications for Municipal Boundary Issues

How did the foregoing change affect the relationships between cities and townships? The pattern that emerged placed increasing pressure on the infrastructure of local governments. As developers requested connection to local infrastructure--facilities such

as water and sanitary sewer systems--the practice of annexation became more pronounced. Annexation rules of the 1950s required the advocates of annexation to secure signatures and file the petitions with the county clerk and county board of supervisors. The role of these officials was primarily administrative in nature—does the number of petitions signatures meet the requirements of the law? If so, the board set a time for an election on the issue. The difficulty, however, was that the balloting process favored cities as the votes of city voters and township voters were combined except for the votes of township residents on the property to be annexed. Annexation proponents dealt with the votes in the area to be annexed either by selecting unoccupied properties which left the combined city-township vote determine the outcome. Occasionally, as a defensive measure, the township would move a voter onto the otherwise unoccupied property so a "no" vote could be cast to defeat the annexation proposal.

Another defensive measure often employed was labeled as the "race to the courthouse." That is, whenever a township supervisor caught wind of a city's annexation plan, the township would quickly gather signatures to file a petition to incorporate the township as a city and thus protect itself from annexation. The unit that was first to file a qualified petition would be the first to have its issued voted upon. It was thus necessary at times to race to the county courthouse to file the petitions before the opponent did so.

During the late 1950s and 1960s a number of townships used city incorporation as a defensive strategy against annexation. In the Detroit metro area Livonia, Southfield, Warren, Sterling Heights, Troy, Rochester Hills, and Farmington Hills were among the new the cities incorporated from the remaining portions of townships. In the Flint area the city of Burton was incorporated from an entire township; in the Grand Rapids area the newly incorporated cities from remaining portions of townships included Wyoming, Kentwood, and Walker; and in Kalamazoo County, the city of Portage.

With expanding township population, townships were gaining strength in the legislature and legislators gave increasing heed to the demands by the Michigan Township Association for reforms in annexation rules. With counter pressures from the Michigan Municipal League, legislators found the resolution of the demands evasive. The MTA demand, at the minimum**,** was for a vote by township voters to determine whether a township would release territory to the adjacent city. For cities, such an arrangement would mean a virtual end to annexation.

The first step in resolving the two positions centered on the establishment of the State Boundary Commission (SBC) which would be charged with the responsibility to oversee the processes of incorporation, annexation, and consolidation. The legislature approved SBC oversight of the incorporation and consolidation processes in 1968 but did not resolve the dispute over the annexation process. (Membership of the SBC consisted of three gubernatorial appointees and four additional members [a regular and alternate--representing city and township respectively] who are appointed by the chief probate judge in the county from which the petition was filed.)

Ultimately, to devise a compromise on the issue of annexation, delegates from the two municipal associations met in a Lansing restaurant late into the night to negotiate a

solution to the issues. The agreement that the legislature later enacted would authorize several methods to petition for annexation. One method provided filing a petition by persons or entities that collectively hold record title to 75% or more of the area proposed for annexation. In other instances, owners of land could petition the SBC for annexation of their land to the city. If an area to be annexed had fewer than 100 registered voters, the decision would rest with a majority of the SBC members. An alternative arrangement applied if the SBC approved a petitioned annexation which contains a population of more than 100 in the area approved for annexation. Then a referendum petition signed by 20% of the registered electors of the area approved for annexation could be filed with the SBC. A majority of voters could overturn an SBC decision.

The SBC procedure involve**s** a three-step process. Its first responsibility is to review the petition to annex township territory and determine whether the petition conforms to the statutory requirements. If it does not qualify, the petition is declared insufficient and rejected. If the petition is declared sufficient, the SBC conducts a public hearing in or near the affected municipalities. The public hearing process remains open for a 30-day period during which time persons may provide additional written comment for the record. This is followed by a 7-day period during which time **t**he involved parties (petitioner, city, township) may submit rebuttal comment on the 30-day material. Upon the completion of these stages, the SBC conducts an adjudicative meeting where, after hearing summary comments from the petitioners, the city, and the township, renders its decision. The SBC decision must involve consideration of an 18-point statutory criteria listing (Initially, the SBC was established as a Type One agency with the authority to make a final decision on the case unless it was challenged in court. Under a 1996 Executive Order**,** the SBC was reclassified from a Type I agency to a Type II agency so that its decisions now constitute *recommendations* to the Director of the Department of Labor and Economic Growth who makes the final decision on a case and signs the order.)

In 1978, the legislature amended the Charter Township Act and granted additional protection from annexation. The new statute granted immunity from annexation to all townships that were chartered by 1978. Townships that were chartered after that time could be granted immunity from annexation by the SBC if the township met several criteria including the provision of water and/or sewer services.

Outcome of the Compromise

As the SBC began implementing its responsibilities, the caseload for annexation grew dramatically during the 1980s. The caseload involved anywhere from 13 to 47 petitions filed per year. Developers initiated virtually all of the cases and maintained that annexation was necessary to gain access to city water and sewer services. Most commonly, cities providing these services responded by saying the city policy does not permit extending these services outside the municipal boundaries. Hence, in townships that did not provide these services, annexation was the only avenue for gaining these services.

The compromise also resulted in a major decline in the incorporation of new cities and villages and brought a virtual end to the city incorporation of full townships.

Public Act 425, 1984

In 1983 and 1984 the General Motors Corporation was contemplating the construction of a new manufacturing facility in Flint Township, adjacent to the city of Flint. One roadblock for the plan was the township's lack of water and sewer services. Absent these services, the site did not meet the company requirements. In the economic interests of the region, negotiations between the city of Flint and the township produced an agreement whereby the city would extend its infrastructure to the site. In addition the city-township contract would give the city control over the land and the township would receive a portion of the property taxes that would be levied on the new facility.

Upon learning of the agreement, state officials questioned whether the city-township agreement had a statutory basis. Upon concluding that it did not, officials drafted legislation incorporating most of the provision of the contract and submitted it to the legislature for enactment. The legislature enacted the bill in 1984 although the company's plan fell through and did not build the facility.

Ten years or so later, the statute was rediscovered and soon, "425 agreements" between cities and townships were being used to form agreements primarily between cities and townships primarily for purposes of economic development. (Use of the provisions in PA 425 to achieve economic development is specified in the act.) Typically, the economic development project motivating the agreement required access to public water and sewer systems. The act permits the two units to approve a contract to a maximum of 50 years**,** with the option to renew for up to another 50 years. Typically, the agreements include temporary or permanent transfers of land developments motivating the contractual arrangements. Sharing property tax revenues levied on the transferred lands is also a common provision.

The act also includes a provision that prohibits the SBC from including any lands that are part of a 425 Agreement in any of its annexation or incorporation actions. This provision has led to the use of the statute as a defensive measure against the standard methods of annexation. Occasionally, two townships have formed a 425 Agreement that has had little immediate bearing on economic development but served to prevent annexation by a neighboring system. Since the statute does not require lands included a 425 Agreement to be contiguous with the receiving jurisdiction and does not require any county or state level oversight, the act is susceptible to such uses.

On the other hand, the act has been used in a variety of circumstances that were conducive to economic development projects. One of the most notable examples involves an agreement between the City of Lansing and Alaidon Township to facilitate the construction of the Jackson National Life Insurance Company several miles away from the nearest city boundary. The state offered a grant to construct a sewer line to the office complex and to keep the company and its thousands of employees from moving to a location outside Michigan.

Municipalities are required to file their P.A. 425 agreements with the state Office of the Great Seal. The office now has hundreds of documents on file. The difficulty, however, is that the office has no responsibility to evaluate the documents against statutory provision.

The question is whether the successors to those involved in shaping the agreements will be aware of the provisions after the 50 year agreement expires.

The lack of state oversight of the boundaries of P.A. 425 agreements, the lack of contiguity between the municipalities involved is likely to cause significant future problems as the agreements expire. One agreement, for example, has transferred a hundred acres from a township to a city for two 50-year periods. Upon the expiration of the second period, the residents living there will decide which jurisdiction will receive the lands. During the intervening 100 years many decisions will be made regarding the use of the land, the infrastructure placement and maintenance, etc. Given the long-term uncertainty associated with such an agreement, why did the township agree to such a contract? The township board approved the contract as a defensive measure against permanent annexation of the land and loss of all revenues and land use control of the lands.

In this instance, the township was a charter township. The township was chartered prior to 1978 and therefore was immune from annexation by the SBC. However, the Charter Township Act contains a provision that permits township lands to be annexed to a contiguous city. The city voters, by election, can vote to approve or reject the annexation as can the residents of the lands to be annexed. However, the voters in the remaining portion of the charter township are not permitted to vote on the question. Hence, the township exercised its best option—sign on to the 425 Agreement.

Because the SBC has a record of approving a large percentage of the requests of landowners to annex lands to a cities, township officials are inclined to pursue the P.A. 425 approach. As a consequence, the number of SBC caseloads is low compared to that of the earlier periods. During the last several years, the number of annexation petitions per year is as low as six or seven.

The number of petitions for city incorporations has also been low—perhaps one or two per year. Throughout the 1980s, 15 incorporation petitions were filed. Throughout the 1990s, 8 incorporation petitions were filed. The exception to this count has occurred in the period from 2004-2007 when the SBC received or has pending four cases for the incorporation of villages to cities. The petitions do not ask to expand the boundaries beyond the existing village

Just why these village-to-city incorporation petitions have been filed with the SBC is not clear. The legislature has made no changes in the legal standing of villages. Nor has any of the villages included non-village lands in its petition for city incorporation. The villages that have filed petitions are scattered throughout the state. Only one of the villages that filed, Caro in Tuscola County, is a county seat. The principal explanations offered by the village representatives have to do with property taxes and related benefits. Village representatives often assert that village property owners pay township taxes but the village receives little benefit from the tax. Others maintain that the township levies a tax millage for road improvements but maintain that the proceeds are not used for village streets. (Villages do receive state road funding through PA 51.) Although township officials offer counter arguments, the fact that villages, unlike cities, remain part of the

township tends to generate a perspective that the villages are subsidizing the township government.

Townships in which villages are located object to the incorporation of the villages as home-rule cities. Their main objections relate to the property tax implications. Significant portions of the township tax base rest on lands under village control. If the village incorporates as a city, the developed portions of the tax base in the village are removed from township jurisdiction and the township tax base. In addition, the village and the township often have a record of cooperating in the provision of some services, especially fire protection, municipal office space, and sometimes health related services. "Divorcing" the two units and instructing each to go its own way often constitutes a difficult transition. The problem is exacerbated when the incorporation includes high-value industrial or commercial tax base.

New village incorporation requests are infrequent. The SBC, in recent years, has received three petitions for new village incorporation. Both of these were similar in that they both surrounded large inland lakes that are surrounded by lakefront and summer vacation residences. The SBC approved the petition on two of these; voters approved one and rejected the second one. The third petition asking for the formation of a 23 square mile village is still in process at this writing. Like most village incorporations the arguments favoring incorporation relate to the need for higher level governance, such as planning and zoning, and services such as road improvements, public utilities, and improved police and fire protection. Obviously, all these services will require greater tax levies.

Boundary Actions

• **2000**		**2002**	**2004**	**2006**
– 425	45	35	53	32
– 279	58	33	42	44
– GLV	35	30	19	13
– HRV	2	1	0	0
• **2001**		**2003**	**2005**	
– 425	19	26	51	
– 279	60	38	48	
– GLV	25	19	8	
– HRV	1	0	1	

Remedial Options for the Future

The foregoing accounts constitute a review of how urban and suburban local governmental relationships have evolved over the years. In evaluating this history it is important to note that the origin of the county, township, village, and city was based on a sound plan addressing the needs of state government and local residents. Over the 160 years it has been in use, however, conditions, needs, and opportunities changed dramatically. During period adjustments in the system were made but none was revolutionary.

Should the system now undergo a revolutionary change? If yes, what goals are to be sought? If no, what minor fixes should be sought?

1. **Understanding the Role of Government.** A key priority is that local leaders know and understand the role of government. We can all define the role in many ways but it is essential that they see the role as one of governing or regulating the interdependent relations of people and that the greater the number of people involved, the greater the interdependent relationships, and the greater the need for more government involvement. If local officials accepted this definition, they would likely understand that growth in population and greater economic development in a jurisdiction serves to raise the cost of government not to lower it. With such an understanding, the officials would recognize that "winning" the battles over boundary expansion results in only temporary increases in local revenue. Those familiar with the feelings expressed in the SBC public hearings over annexation recognize the assertions that much of the concern is about the gain or loss of tax base.

   If one wants to test this theory of the role of government, one should ask where are taxes the highest. In jurisdictions with few and scattered populations or in jurisdictions with high volume and densely settled populations?

2. **Sharing the Burden of Regulation.** One approach to dealing with annexation actions would be to hold the township harmless in terms of loss of tax base. That is, a change in the law could require the core city receiving annexed territory to pay the township on an annual basis the property taxes lost from the land transfer. A further step could restore the township's per capita state revenue sharing losses if persons were living on the transferred property.

   Neither side would likely find this an attractive solution. Core city officials would argue that township**s** would be receiving a permanent subsidy for the land over which it has no control and obligation. The township officials would argue that the action would be an insignificant compensation for the lost opportunity the action will cost.

   Such a policy, however, would serve to shift the presumed losses and gains and discourage somewhat the competition for development between the two parties.

3. **Preserving Urban and Rural Environments.** The follow-up question is whether the competition for development between core cities and adjacent townships be slowed or discouraged. Many would argue that the competition for economic development and growth is a positive factor because it will generate more economic benefit to the units.

   The difficulty with the competitive environment is that it tends to generate some negative consequences. One of those consequences is that the older core units, whether city or township, are less able to compete because many do not possess the open land for new development. The rural areas do not have to deal with that factor and may thus offer more attractive and lower cost development sites. Some may respond by suggesting that such circumstances will be a positive factor for the state economy.

   What is overlooked, thus far, is that the competition has the consequence of converting lands used for agriculture and natural preservation to shrink and disappear. At the same time the older communities are deteriorating because they often do not have land available to accommodate the needs of new development projects. Hence, their economic base deteriorates and their vitality diminishes over time. Meanwhile, government is called upon to accommodate the needs of the growth areas often at the expense of older communities.

   Over the years, the pace and place of development are left to the developers with little governmental management responsibility except by the municipality directly affected.

   If we could base our development decisions with a greater focus on the preservation of land and natural resources as well as the vitality of our built areas, we would have the potential to define our goals and achieve them. To do so, however, would probably require raising the development decisions to a higher level such as the county or a region. Such a move would not guarantee the desired change as long as our society and policymakers develop values associated with such land uses remain unchanged.

   One only need review the Jackson National Life Insurance Company mentioned earlier. Had state, city, and township officials had different perspectives the outcome could have been different. Allegedly the company wanted to build the new offices in a location that would provide “greater freeway exposure” that presumably that would have been good for business. The question is whether such a site could have been made available adjacent to I-496 through the downtown Lansing where water and sewer services were already available. The $8 million state grant perhaps could then have been used to acquire and clear a site for the facility.

4. **Regional Sharing of Industrial/Commercial Economic Investments.** A fourth option to reduce competition for industrial or commercial economic development is sharing the tax proceeds generated by new development on a regional basis.

The Minneapolis-St. Paul region formed the model for this approach in 1971. The region, consisting of 7 counties and 187 jurisdictions, formed a revenue sharing agreement which became "a palliative in the absence of the right to annex…." The agreement initially called for the sharing of 40 percent of revenues generated by new commercial and industrial development. The agreement now calls for the pooling of 20 percent of the property taxes collected go into a pool. These funds are distributed to the member jurisdictions on a "per capita of wealth formula." The report indicates that under current provisions the Fiscal Disparities Act the difference from the richest to the poorest units is 4 to 1. Absent such a provision, the difference would be 22 to 1.[1]

Can such program work in Michigan? As has been noted several times earlier, the economic competitiveness inherent in the Michigan annexation pattern drives a great deal of the relationships between the core cities and their neighboring townships. If the motivation to gain greater tax revenues were addressed, it seems entirely possible that intergovernmental relations could be modified to generate relationships that would encourage the units to grow cooperatively rather than competitively.

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[1] (www.bluegrasstomorrow.org/revenue_sharing_intro.pdf) The state of Virginia adopted a similar revenue-sharing program to replace one of the most liberal annexation statutes.