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CONSTITUTIONAL REVISION — THE COUNTIES

RICHARD SHELTON*

In 1920 the counties were spending for all purposes \$11,712,000, the cities approximately \$5,000,000 and the state, for all purposes, exclusive of the old Virginia debt, was spending \$6,810,000. In 1930, ten years later, the counties' expenditures were \$16,647,000 and the state, exclusive of the Virginia Debt, and sale of state road bonds \$23,471,000. In 1965, thirty-five years after that, county expenditures were \$20,715,000 and municipal expenditures were approximately \$30,000,000. The state had revenues from all sources in the amount of \$467,000,000. In 1920 all services at the local level were performed by either the county or the city, there were no state welfare programs, no state roads, no state police, etc. The federal government was primarily concerned with national defense and interstate commerce. The only contact of the local citizen was the federal enforcement of the Prohibition Act.

Local services were of course very limited. We had a limited budget. But, the development of the motor vehicle changed this picture radically. In 1920 the Good Roads Amendment established the first state system of primary roads. This forced the counties to upgrade their secondary roads for use by the automobile. By 1930, however, the demands for roads had forced the counties into bankruptcy. Property tax rates had gone to such a high level that the people revolted and passed the Constitutional Levy Limitation Amendment. This reduced the revenue from the property tax by 50% in one year and since this was the only source of revenue for the counties it drastically curtailed the counties' ability to perform its functions. The State took over secondary roads but did not take over the outstanding indebtedness that had been incurred for the construction of these roads. And, with only a few minor exceptions, the counties today, 35 years later, are still limited to the property tax as their sole source of revenue.

From 1930 to 1950 county government gradually became stagnant and performed only those functions made mandatory by law.

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At the beginning of the 50's however, people began to demand community services such as recreation, hospitals, airports, libraries, fire protection, health and mental health facilities and many more. The counties with their limited revenue sources were simply unable to render these services. By 1960 many of the counties were facing a financial crisis. In order to seek some solutions they joined together to establish the West Virginia Association of County Officials. Some of the purposes of this Association are set out in its constitution:

(a) To maintain a permanent organization to secure cooperation among the several counties of the State of West Virginia and the public officers of said counties in a comprehensive study of local problems and the application of knowledge obtained to procure efficient methods of local government.

(b) To investigate, study, discuss and recommend improvements and the application of more efficient methods in county government.

(c) To engage in the study of standardization of administrative practices in order to increase efficiency and to reduce costs of operation.

(d) To provide means whereby county officials may interchange ideas and experiences and obtain expert advice.

(e) To secure harmony of action among the counties of West Virginia in matters that affect the rights and liabilities of the counties.

(f) To ever be on the alert to prevent the alienation of fundamental county rights and the removing of such rights as are inherent with the county government to invest same in other branches of government.

(g) To cooperate with officials of state and federal governments in matters leading to the betterment of conditions generally in the counties.

The 1960's have produced further difficulties for the counties. The federal government instituted a large number of grant-in-aid programs for public buildings, industrial development programs, sewage disposal, airports, recreation, health and mental health, community planning and many others. In order to participate in these programs two conditions were laid down. The county must have initiated a county wide comprehensive plan and

must also provide matching funds. Currently regional planning is being required. Most counties were unable to participate in these programs for the reason that in their very strained financial situation they could not find the matching funds. Excess levies were about their only source of revenue and the people were reluctant to vote the excess levies. Thus, while counties in other states have, in many cases, been able to increase their service capacity, West Virginia counties, try though they might, have been forced to sit still.

The only tax that anybody defines as a good tax is one that somebody else has to pay. No tax is liked but the most disliked of all taxes is the property tax. The memory of the 30's when large numbers of people lost their homes and other property because of their inability to pay property taxes has not completely faded from memory. Because the property tax is imposed and collected locally it is the easiest of all taxes for the individual to resist. Nationally we are in what has been described as a taxpayers revolt and in my opinion we have gone about as far as possible in the direction of imposing new or additional taxes. We must begin to better divide the tax revenues we now have.

The federal government, with each national emergency, has increased federal taxes but with the disappearance of the emergency there has been no corresponding reduction. As a result, the federal government has taken an increasing share of the tax dollar that the public is willing to pay for governmental services. The average citizen gripes about an increase in federal taxes but does little; nor can he do much about it. The state, faced with increasing demand, has increased taxes but only in the face of bitter opposition and has been unable to produce sufficient revenue to adequately meet our *state* needs.

The county and municipal governments are extremely close to the people and for this reason any substantial increase in local taxes has met with such tremendous opposition that local governments have found it impossible to render those services which are necessary for a good community. We can change our form of government, and we can replace incumbents with new administrators, but until we find some solution to the problem of local governmental finance we are not going to see any great change in local government, county or municipal, in West Virginia.

The increasing revenue problems of state and local governments have been filtering through to Washington and in the past three or four years both the President and Congress have been giving serious consideration to some method of sharing federal revenues with the state and local governments. This generally has taken the form of block grants with the state and local governments being permitted to determine the purposes for which such funds might be used. The present national administration and most congressional leaders are committed to some action in this area. To me this is the only solution to the revenue problems of state and local governments.

In view of these financial difficulties of local governments therefore, the constitutional revision most urgently required from the point of view of West Virginia counties, is the elimination of the provisions in article 10, section 6 of the constitution which prohibits the granting of the credit of the state to or in aid of any county or city.

In the event Congress adopts the block grant program and allocates the funds to the state and permits the state Legislators to further allocate the funds to local governments it is extremely questionable that, because of the provisions of article 10, section 6, these funds could be channeled down to the counties and municipalities.

Local units of government are reluctant to impose new taxes or to increase existing taxes. This reluctance stems from the almost overwhelming public opposition and from the fact that taxes imposed in a city or a county which are not imposed by their neighbors often places a community in an unfair competitive position and results in loss of business and industry. A state imposed tax, to be locally shared, would, to a degree, overcome these difficulties.

Now—on constitutional revision, generally. The West Virginia Association of County Officials at a general meeting of its membership did on two occasions approve the calling of a constitutional convention. I was authorized by the Association to and did appear before the House of Delegates Committee on Constitutional Revision in support of a constitutional convention.

As a historical matter, however, the West Virginia Commission on Constitutional Revision which was established in 1957 prepared and had submitted to the Legislature a so-called "County Re-

Organization and Home Rule Amendment for County Government". To the best of my knowledge no county official was appointed to this Commission nor were county representatives consulted in the drafting of the amendment.

The West Virginia Association of County Officials is on record as opposing this amendment for two very important reasons. One, it gives to the Legislature the power to determine the form of county government and there are almost no restrictions upon the Legislature as to such form; and two, there was absolutely no guarantee of real home rule. The amendment would permit the Legislature to strip from office every incumbent in county government by simply eliminating the present form. It is easy to see that a hostile Legislature could greatly reduce county power and strip the county offices.

On the other hand, I do not believe county officials would oppose an amendment which would leave the choice of change and form to a vote of the people rather than a vote of the Legislature.

Any constitutional amendment dealing with county or municipal re-organization should provide for the principle of "residual powers". Under present constitutional requirements the counties have only such powers as are specifically granted by the Legislature. An affirmative vote is required by the Legislature before a county or a city may exercise any power. This means that the counties and cities are constantly before the Legislature seeking authority to perform functions which are made necessary by changing conditions. The Legislature moves slowly and local government is often seriously handicapped.

"Residual powers" simply means that broad powers are automatically granted to local governments and it takes a positive legislative act to reduce or modify these powers. It is much easier to defeat legislative proposals than it is to get them enacted.

Now let's take a look at taxes. One, the capitation tax is a nuisance tax which is totally unrealistic when you consider its cost in comparison to the revenue it produces. It should be repealed. Since assessors receive much of their compensation from this source any amendment repealing the capitation tax should provide for the readjustment of the assessor's salary.

Serious consideration should be given to revision of the property tax with respect to a homestead exemption, classification of

property and limitation of levies. A proper discussion of these proposals would require much more time than I now have, so I will limit myself to one very pressing aspect of this subject.

Upward spiraling living costs have placed those retired people with small fixed incomes in an extremely hazardous position. Those who have been fortunate enough to acquire their own homes find it extremely difficult to meet the obligations of the property tax and are constantly in fear of losing their homes. This alone justifies revision of the property tax. However, there is another much more alarming situation developing in this area.

Government at both the federal and state levels are moving vigorously to encourage and assist low income groups to acquire homes. I approve of such action but, at the same time, policies at both levels tend to discourage home ownership by those in the \$6,000 to \$12,000 income bracket. The most important thing in the life of a young couple beginning to raise a family is the stability that comes with home ownership. This group is the real backbone of our system and yet the action of our government would seem to discourage them. With the present level of interest rates, which are held to be essential to resist inflation, and the ever increasing pressures to increase property taxes, home ownership for this group has become an almost impossible dream. For these reasons, including both the young and the old, some homestead exemptions must be given serious consideration in any constitutional revision.

Finally, a most important point from the standpoint of counties. Many supporters of constitutional revision contend that revision is necessary because our present constitution is too long, cumbersome and detailed and that the new constitution should be shorter and simpler. Most often these individuals offer as a comparison our Federal Constitution. Such a comparison is incorrect and improper. I think our West Virginia Supreme Court of Appeals has indicated the impropriety of this more clearly than I can in *County Library v. County Court*,¹ wherein they stated:

[T]he position that this section vests in the Legislature of this State almost plenary powers on every subject, not foreclosed by some other provision of the Constitution, has not been questioned. The powers of the Legislature of this

¹143 W. Va. 385, 390-391, 102 S.E.2d 712, 716 (1958).

State are not to be confused with those of the Congress of the United States. The Federal Constitution is a grant of power, while the Constitution of this State is a restriction of power. While we look to the Federal Constitution to see what Congress may do, we look to our Constitution to see what the Legislature may not do.

Since the Federal Constitution is a detailed list of *grants of power* and a state legislature has almost plenary powers not foreclosed by some provision of the constitution it follows that the list of restrictions must be much longer and more detailed in a state constitution.

A good lawyer in drawing up a contract is certainly more concerned with protecting his client's welfare than he is in a short and simple contract. A constitution is a contract between the people and those who govern them and the first requirement of a good constitution is that it adequately protect the welfare and the rights of the people.

SUMMARY

First, and most important, from the point of view of West Virginia counties, we must remove the restriction concerning state or federal grants directly to county governments. Next, it seems obvious that on any constitutional review or revision body some provision should be made for representation of county governmental officials, both as a practical and a theoretical matter. Third, any constitutional revision which affects the form of county government should be placed before the people in a referendum. Vesting this important power in the Legislature is neither wise nor practical. Any such re-organization should provide for residual powers, enabling counties to move rapidly to meet urgent problems rather than remain tied to the present cumbersome system. Next, the capitation tax should be repealed, with adjustment in the Assessor's salary; the property tax should be revised to provide for a homestead exemption, classification of property, and limitation of levies. Finally, any revision of the constitution should not be prejudiced by a theoretical desire to keep the document short. It is too important an effort to be left to a few words.