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FINANCIAL RESPONSIBILITIES OF WEST VIRGINIA MUNICIPALITIES*

WILLIAM H. FILE, JR.**

The decision of our supreme court on June 1, 1949, in the case of State ex rel. City of Charleston, et al. v. Sims,1 has once again cast in bold relief the ever-present problem of proper apportionment of taxing powers between the various taxing units. This decision invalidated an attempt of the legislature to use a portion of the liquor proceeds as a direct grant to all West Virginia municipalities on a proportionate basis.

This paper will be limited to a general discussion of the reasons for the present so-called financial plight of the state municipalities, and a possible remedy for this condition.2

Following the decision in the City of Charleston case, there was a tremendous outcry on the part of many municipalities concerning the emergency which was supposed to have been created by this decision and widespread demand was made for a special session of the legislature to grant immediate relief from its supposed hardships. However, two principal interim legislative committees,3 which were studying the broad problem of municipal finances, concentrated their study for a time on the question of the necessity for a special session and their research disclosed that such an emergency did not exist as would require a special session at this time. The governor of the state followed their recommendation and declined to call this session, so that the citizens can expect no relief until the next regular session in 1951. It was the feeling of the majority of these committees that the decision merely aggravated a condition which had been developing over a long period of time and perhaps now made necessary an effort to provide long-term relief rather than stop-gap relief to the cities. When it is realized that the $600,000 of liquor profits which had been paid cities since 1941 constituted slightly under 5% of the total municipal revenues, it is obvious that no real emergency was created.

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*Address delivered at the sixty-third meeting of the West Virginia Bar Association, at White Sulphur Springs, August 13, 1949.
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1 54 S. E.2d 729 (W. Va. 1949).
2 Standing Committee on Government and Finance and the West Virginia Commission on Interstate Cooperation.
3 Acknowledgment is made of the assistance of Dr. Carl M. Frasure and Dr. Clyde L. Colson of the West Virginia University faculty in making available research material on this problem. Neither of these gentlemen, however, is responsible for any conclusions reached herein.
In other words, the emergency was only 5% greater than at the time the 1949 legislature was in session. There is no comparison between this so-called emergency and the very real emergency presented in 1947 by the decision in *Shulick-Taylor Co. v. City of Wheeling* which invalidated the business and occupation or "gross sales" taxes in many of our larger cities. The loss to most cities which had levied this tax was as much as 35% of total revenues. This crisis was met by the passage by the special session of a bill extending the power to levy this tax to all cities.5

In that case it was merely a question of handing back to the child the stick of candy which had been taken away. In the present case the problem is to convince the child that Santa Claus actually does not exist and that municipal stockings will hang empty on Christmas morning—and on July 1.

The municipal child which has just learned the truth about Santa Claus has been growing very rapidly in the past few years.6 Part of this growth was through extension of corporate limits—but most of it has come from the country-to-city movement that exists in every state and was accelerated by the recent war and the concentration of war plants in municipal areas. While this state escaped most of the problems resulting from sudden tremendous influxes of factory workers during the war, the post-war period has seen great numbers of returning veterans and war-workers who had become enamored of city life during the war, move in to towns and cities near their former country homes. The popular World War I refrain "How Can You Keep Them Down on the Farm After They've Seen Paree?" has become increasingly popular since World War II.7

Many factors other than growth in population have added to the burden of the cities. Increased costs of materials and personal services to cities have been at least as great as in the state and the national governments. This has been aggravated at times by the

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4 130 W. Va. 224, 43 S. E.2d 54 (1947).
5 W. VA. CODE c. 8, art. 4, §13b (Michie, 1949).
6 Since 1940 a reasonable estimate places the gain in the population of our 215 municipalities at nearly 200,000, making a total municipal population in excess of 800,000.
7 Some other factors contributing to this city-ward movement are: the presence in cities generally of greater police, fire and health protection; more extensive educational, recreational, social and amusement facilities; more adequate utility services; and the many other added conveniences of city life. All of these, coupled with a high state of prosperity which made it economically possible to move, have caused the ratio of city to country dwellers in this state to rise from 1-2 in 1940 to an estimated 4-5 in 1949.
tendency of the legislature to encroach on municipal prerogatives without a proper consideration of the cost of some well-meaning acts. For example state statutes now practically dictate the working hours for firemen—normally a matter of local government. When this was put into effect some cities were forced to increase the number of firemen employed, but the legislature did not seem to be concerned about the increase in cost. Admittedly such changes are good, but like most good things they cost money.

There also has been a tendency for citizens to demand expensive services that a few years ago were considered neither necessary nor desirable. Many cities have introduced recreational programs that cost from five to fifteen percent of their total revenues and still this field has just begun to be developed. Planning and zoning are becoming increasingly important and at the same time increasingly expensive to administer. More and more city administrations are being called upon to install sewage disposal systems, garbage systems, parking lots, and buildings, and other public utility or semi-public utility services. While these sometimes can be financed by revenue bond issues exclusively, this is not always the case.

The war-time accumulation of deficiencies in streets, sidewalks, city buildings, equipment, lighting systems, and other items requiring tremendous capital expenditures has given most city officials nightmares in which they chase fleeing tax dollars down endless dark alleys, while the needs multiply without ceasing.

In the light of the greatly expanded needs of cities it is pertinent to review briefly what use has been made by cities of their present taxing powers, and what new sources of revenue have been tapped to finance municipal programs. From the study referred to above it appeared that many cities were not availing themselves fully of their present tax powers. For example it was found that about 25% of the cities reporting were not levying property taxes at the maximum rate. However, this included none of the larger cities and the actual amounts not collected are a very small percentage of the total revenues from this source. It appeared also that a very few cities were levying excess levies which could be done by means of an election. This would provide a fifty percent increase of revenues from this source over a three-year period. Furthermore, it appeared that less than a third of the reporting cities were levying the gross sales tax, and that none of them were

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8 W. Va. Code c. 8, art. 6, §9 (Michie, 1949).
9 See note 3 supra.
currently levying the maximum permitted by law. The potentialities of the revenue from license taxes on activities on which a state license is required likewise have not been utilized to the fullest extent particularly in view of the recent decision in *Tsutras Automatic Phonograph Co. v. City of Williamson*, holding that cities generally are not limited to the amount charged by the state in charging for such licenses. In addition to the above principal sources, which are not being completely utilized in most cases, the cities have the right by specific statutory authority to charge special service fees. They also have the right to charge special assessments for street, sidewalk, and sewer improvements, and some individual cities have further taxing powers by virtue of special charters. Furthermore, a few cities have adopted the home rule form of government under general statutory authority granting several taxing powers not common to many other cities, including (1) a capitation tax, (2) a motor vehicle operator's tax, (3) an amusement tax not exceeding three percent, and (4) a domestic animal tax. Rather than utilize to the maximum the above taxing powers, or such of them as are available in individual cities, the tendency has been to turn to more popular and less painful methods of acquiring city revenues. As a result the period since the adoption of the Tax Limitation Amendment in 1932 has seen a change of emphasis from property taxes, to a growing reliance upon such quasi-tax sources as police fines and penalties, parking meters, parking lots, building permits, and various types of service charges. At the same time more and more cities have enacted the gross sales tax—essentially a tax on business—and taxes on so-called luxury items such as amusements, liquor, and the like. Revenues from gross sales taxes have increased many fold during this period, and are now second only to property taxes in total revenues.

As demands and needs increase the pressure increases upon city officials to produce the maximum possible from present sources. There are certain dangers in this which cannot be ignored. A necessitous city is no more free than a necessitous man. It is quite possible for example that an attempt to increase the revenue

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10 51 S. E.2d 427 (W. Va. 1948).
12 W. Va. Code c. 8, arts. 8-10 (Michie, 1949).
from police fines and penalties has resulted in an oppressive and unfair police administration in some cities—in others the need for money may have led to a system of exacting tribute from criminal elements in the form of weekly or monthly fines, whereas a few jail sentences might have persuaded the perpetual offenders to reform or seek greener pastures.

Another danger from a "jerry-built" financial structure is that some highly productive stream may be dried up overnight. It is common knowledge that the amusement taxes levied by some cities are without legal basis. It is not hard to guess what will happen in cities levying this tax without authority if economic conditions reduce theatre and other amusement attendance appreciably. This would most likely occur when the cities could least afford such a loss.

There is also the added danger that projects started for one purpose which are incidentally profitable may be forced to yield even greater profits even though this tends to defeat the original purpose. Thus, excessive charges on city parking lots or parking buildings would tend to defeat the real purpose of such projects.

While the cities have not been without fault in their failure to use to the maximum every source available to them, this has been due in a large part to local conditions which do not make it advisable to have identical tax structures in all cities regardless of size, local economic conditions and the like. There has been a tendency also in the various sessions of the legislature during the past ten years to subordinate the demands of the municipalities to the passage of legislation meeting the pressing demands for greatly increased appropriation for schools, and roads, and other state functions. Many constructive suggestions by spokesmen for the cities have fallen on deaf ears in the clamor for aid to these state functions. It is possible also that there has been a tendency on the part of the rural legislators, who heavily outweigh the cities' representatives, to belittle and ignore city problems. This is understandable when it is realized that most rural roads and schools in the eyes of the rural representative have been woefully neglected while city streets and schools at least to the outside appearance are vastly superior to their country counterparts.

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15 It is readily apparent that it would be easier for a large city to profitably enact and enforce a gross sales tax than for a small rural community where the shopping area is extremely limited and where the amount produced would be negligible. This is evidenced by the fact that very few of the small cities have made use in any way of the power to levy this tax.
But not the least factor contributing to this trend has been the tendency of cities generally to demand that the state carry out the unpleasant task of enacting and collecting taxes and contributing to the cities in accordance with their wants. Whether or not this is a backwash from the large scale program of a similar nature being carried on between the federal and state governments is beyond the scope of this paper. Regardless of the cause of this attitude, its appearance in recent legislatures has resulted in sidetracking necessary reforms in favor of more immediate state handouts. In the City of Charleston case mentioned above, our court has most effectively brought an end to this practice.

The cities and the state are now faced with the problem they have so long avoided—enactment of a constructive long-range program that will permit our cities to grow and progress to the maximum extent possible, without the necessity for relying upon either the indulgence of the legislature or an unstable system of finances. This is of equal importance to the state and to the cities—attractive, well-run, progressive cities are an asset not only to their inhabitants, but to the state as well.

The entire question therefore resolves itself into a search for a plan which will return to the cities the dignity and responsibility of autonomous governmental units in so far as the framework of our constitution and the preemptive needs and powers of the federal and state governments will allow.

Such a plan, we have seen, must of necessity rule out the possibility of direct grants from the state. For obvious reasons, also it should not be predicated upon the assumption that the state or federal government will abandon any of their present fields of taxation. It would seem furthermore that a sound plan should not require the adoption of a new charter by election or other means, since many of the charters are generally satisfactory except as to tax matters and have acquired a hallowed status that has already defeated some attempts to replace them by home rule charter elections.

It is submitted that this plan should be in the form of a broad legislative grant of powers to all municipalities, regardless of size or type of charter, which powers or any of them could be placed in effect by ordinance alone.

In other words, all municipalities should be accorded a true home rule status for taxing purposes with the choice and extent

18 Note 1 supra.
of use of such powers to be left to each municipality, limited only as suggested hereinafter. It is felt that the pressure of local public opinion on the local elective officials, whose terms are almost uniformly brief, will operate as a check on any attempt at abusive use of such powers, but as an added safeguard court tests of reasonableness could be provided for in the enabling legislation.

It is believed that the Home Rule Amendment\(^{17}\) adopted in 1935 grants to the legislature powers sufficiently broad to accomplish this purpose without further constitutional amendment or municipal elections.

The real problem, however, is to determine what general powers should be included in such legislation. Probably no two persons would agree on this point.

In order to effectuate the broad reform desired, however, a bold approach similar to that followed in Pennsylvania in 1947\(^{18}\) is deemed necessary. Their legislature at that time passed an act providing that cities (and certain other political subdivisions except certain townships) could tax "any and all subjects of taxation not levied upon by the state." Without considering the various sources thereby excluded in Pennsylvania, it is apparent that the exclusion of all fields in which our state had moved first would be too broad. To avoid this result the legislation could prohibit city entrance into some state-preempted fields and in others list permissible limits, extending the broad unlimited power to fields in which duplication would not result.

Thus, a one-fourth to one-third limit on city gross sales taxes (which is generally more than is levied now) would not seem to be unreasonable. Incidentally, if each city would adopt such an across-the-board percentage of this state tax, the state could collect this for the cities along with the state's collections, thereby saving the city this unnecessary administrative cost and at the same time making the payment of the tax more convenient to the taxpayer.

It is the writer's opinion that the general consumers sales tax field should be barred to the cities. This tax weighs most heavily on persons of low income who must spend virtually their entire incomes for living expenses. Furthermore, this tax is the main support of schools and if the need should arise the rate might have to be raised by the state.

\(^{17}\) W. VA. CONST. Art VI, §39 (a).

On the other hand limited taxes on beer, cigarettes and other luxury items, although actually a form of sales taxes, have proved very productive and generally satisfactory in cities in other states. The present two percent city sales tax on liquor has been most acceptable and is in force in all cities having liquor stores. This rate could be increased moderately and it has been suggested that the price of liquor could be lowered an equal amount by the state, thereby not increasing the cost to the consumer. While cities without liquor stores would not benefit from this, they include only a small percentage of the total city-dwellers. Some other taxes which could be made available to cities are: gasoline, motor vehicle licenses, amusement, income, severance and per capita. Some of these should be limited; others to be left to the discretion of the local administrations with the courts figuratively looking over their shoulders to prevent abusive use of such powers.

While Pennsylvania's recent action in this regard has attracted nation-wide attention, at least twenty-seven other states have long permitted the exercise of similar powers by their cities. Our mother state, Virginia, has long granted almost complete autonomy to its larger cities, even to the point of separating them from any county affiliation, and permitting them to operate their own school systems. New York recently has followed Pennsylvania's lead in part.

The cardinal principle underlying such broad powers is the recognition by state legislatures of the wisdom and integrity of city administrations as a whole. There is no basis for the assumption by legislators that they are better qualified than the city fathers to determine what taxes cities shall enact. So long as state tax sources are not endangered it is the writer's opinion that the integrity, common sense and statesmanship of our councilmen and mayors will insure a reasonable and generally satisfactory application of all powers granted to them.

All of the above discussion has ignored the problem of bringing property assessments more nearly in line with their actual values. This of course would be of great assistance to our cities as well as to our counties and the states. It is hoped that this can be accomplished in the near future. When it is done it will make available to cities at least two or three times their present receipts from this source. Nevertheless, the accomplishment of this long-deferred

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and highly controversial task will not make the suggested program unnecessary. It will merely reduce, not remove the cities' needs.

In conclusion, it is submitted that the principle underlying this plan could regenerate in the minds and customs of our citizens the almost forgotten concept of the New England town-meeting in which the problems of local government and taxation were recognized as the personal responsibility of every citizen.²⁰

²⁰ When Governor Thomas E. Dewey of New York signed the bill enacting the New York form of this plan in March, 1947, he said: "We have taken a firm step in the direction of reposing confidence in the people at home and in their local governments to manage their own affairs in their own way according to their own judgment. This is the highest tradition of a free Republic."