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Home Rule and Special Legislation in Minnesota

The Minnesota constitutional provisions on municipal home rule and special legislation were a source of frequent litigation until they were replaced by article XI in 1958. The author of this Note compares the new and old provisions, and examines the changes made by article XI. He concludes that certain defects still exist that can be cured only by statute or by further amendment.

INTRODUCTION

One method of administering local government in the United States is through municipalities, which are local units incorporated either by specific statutes¹ or by general constitutional provisions for home rule.² The form of government of a municipality and the powers it may exercise depend upon the method of its incorporation. Units authorized to adopt home rule charters will have their form of government and their municipal powers set forth in their charter;³ units created by specific statutes may exercise only those powers that the statute makes available to them. In addition, home rule municipalities may be governed by any statute that the legislature enacts to solve municipal problems as they arise.

Prior to 1892, local problems in Minnesota were general-

1. Statutes that provide for the incorporation of municipalities may be either special or general laws. Compare Minn. Sess. Laws 1854, ch. 6, at 13, a special law providing that "all the country in the County of Ramsey contained within the limits and boundaries hereinafter described, shall be a city by the name of 'Saint Paul' . . .," with MINN. STAT. §§ 411.01, 412.011 (1961), general laws providing for the incorporation of fourth class cities and villages.

2.

Home rule can be defined as the authority of a city under a state constitution and laws to draft and adopt a charter for its own government. This is very different from legislative control whereby charters are imposed by special act or general law, which results in cities having hand-me-down charters from state capitols. Home rule liberates cities to devise forms of government and devise local self-government—to get forward with the business of local government, using local initiative.

Bromage, *The Home Rule Puzzle*, 46 NAT'L MUNIC. REV. 118 (1957).

3. A municipal charter includes "the entire body of existing laws which provide for the organization and government of a particular city or village." *In re Hull*, 163 Minn. 439, 443, 204 N.W. 534, 535 (1925); accord, 2 MCQUILLIN, MUNICIPAL CORPORATIONS § 9.02 (3d ed. 1949).

ly solved by special laws relating to one or, at most, a few municipalities. If a city wished to issue bonds, for example, it would petition the legislature to enact a special law giving it authority to do so. In 1892, a constitutional amendment was adopted that prohibited the legislature from enacting special laws,⁴ which made the formulation of a different method for solving municipal problems essential.⁵ In 1896, section 36 of article IV of the Minnesota Constitution was ratified,⁶ authorizing municipalities to adopt home rule charters and to exercise powers under those charters that were formerly exercised by the legislature through the enactment of special laws.

With the adoption of section 36, Minnesota became the fourth state to provide for municipal home rule.⁷ This provision established the procedural powers by which a municipality could frame, adopt, and amend its municipal home rule charter, but it allowed the legislature to define the substantive powers that a municipality could exercise under its charter.⁸ Many municipalities adopted such charters and thus determined the form of government under which they would operate.⁹

Article XI of the Minnesota Constitution,¹⁰ which was adopt-

4. MINN. CONST. art. IV, § 33 (1892).

5. Special laws were required to amend the often restrictive provisions in complex special municipal charters, for general laws could not be drafted to meet the peculiar problems of individual municipalities. Anderson, *Municipal Home Rule in Minnesota*, 7 MINN. L. REV. 306, 307 (1923); Dawley, *Special Legislation and Municipal Home Rule in Minnesota: Recent Developments*, 16 MINN. L. REV. 659, 672 (1932).

6. MINN. CONST. art. IV, § 36 (1896) [hereinafter cited as § 36]. Amendments made in 1898 and 1942 did not substantially alter the original home rule provisions of § 36, which remained in force until superseded in 1958 by article XI.

7. Home rule provisions were adopted in Missouri in 1875 and in California and Washington in 1895. Anderson, *supra* note 5.

8. Such substantive powers normally include the powers to "perform services, to regulate or prohibit activities under the police power, and a broader or more general right to raise revenue to finance city services and activities." KNEIER, *CITY GOVERNMENT IN THE UNITED STATES* 69 (3d ed. 1957).

9. By January of 1963, 90 Minnesota cities were operating under home rule charters, most of which were obtained pursuant to § 36. League of Minn. Municipalities, *Charter and Election Data on Minnesota Municipalities* 2 Jan. 1963. For an analysis of § 36 in operation, see MCBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* 457-97 (1916); MCGOLDRICK, *LAW AND PRACTICE OF MUNICIPAL HOME RULE* 80-120 (1933); Anderson, *Municipal Home Rule in Minnesota*, 7 MINN. L. REV. 306 (1923).

10. MINN. CONST. art. XI [hereinafter cited as art. XI] provides:

Local government, legislation affecting. Section 1. The legislature may provide by law for the creation, organization, administration, consolidation, division, and dissolution of local government units and their functions

ed in 1958 to supersede section 36, was designed to solve various problems that existed under the former law. It substantially revises the law on home rule and permits special legislation under certain circumstances. The purpose of this Note is to survey the effect of article XI upon the areas of home rule and special legislation in Minnesota. Each will be discussed separately in terms of its historical background, the problems that existed under prior law, the changes made by article XI, the problems that exist under article XI, and proposals for further legislative action.

I. MUNICIPAL HOME RULE

A. HISTORICAL BACKGROUND

Constitutional provisions authorizing home rule may be characterized as either self-executing, permissive, or mandatory.¹¹ A

Special laws. Sec. 2. Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject.

Home rule charters. Sec. 3. Any city or village, and any county or other local government unit when authorized by law, may adopt a home rule charter for its government in accordance with this constitution and the laws. No such charter shall become effective without the approval of the voters of the local government unit affected by such majority as the legislature may prescribe by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

Charter commissions. Sec. 4. The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations, the legislature may . . . provide for . . . [the] appointment [of commission members] by judges of the district court Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

11. See MOTT, HOME RULE FOR AMERICA'S CITIES 17-18 (1949). Some

self-executing provision is detailed enough that municipalities can frame home rule charters without legislative action.¹² This type of provision has the obvious advantage of making home rule available without legislative action; its major defect is that the details of the procedure of adopting a charter must be included in the provision itself and, thus, can only be changed by constitutional amendment.¹³ A permissive provision authorizes, but does not require, the legislature to grant home rule.¹⁴ Since a refusal by the legislature ever to exercise its power would make home rule unavailable, this type of provision may be unsatisfactory.¹⁵ A mandatory provision grants home rule, but directs the legislature to provide the enabling legislation whereby municipalities may obtain charters.¹⁶ Mandatory provisions seem to be subject to the same criticism as permissive provisions since a legislature's refusal to enact enabling legislation would make home rule unavailable. Moreover, even if enabling legislation is passed, it may impose onerous burdens and restrictions on the procedure of obtaining charters.¹⁷ However, such provisions have in fact served as an ef-

states have legislative home rule, which is based solely on statutes rather than a constitutional grant. See, e.g., GA. CODE ANN. § 69-1001 (1957). Such home rule is completely subject to the whims of the legislature and is generally considered inadequate. See BROMAGE, INTRODUCTION TO MUNICIPAL GOVERNMENT AND ADMINISTRATION 120 (2d ed. 1957); MOTT, *op. cit. supra* at 15.

12. See, e.g., OHIO CONST. art. XVIII, § 7, which provides that "any municipality may frame and adopt or amend a charter for its government and may . . . exercise thereunder all powers of local self-government." Other sections of this article specify the details necessary for a municipality to adopt, amend, and operate under a home rule charter.

13. See MOTT, *op. cit. supra* note 11, at 18.

14. See, e.g., PA. CONST. art. XV, § 1, which provides that:

Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. . . .

15. For example, although the Pennsylvania provision was adopted in 1922, the legislature "consistently refused to implement the grant." MOTT, *op. cit. supra* note 11, at 17. In 1949, however, legislation was passed enabling first class cities to adopt home rule charters. See PA. STAT. ANN. tit. 53, §§ 13101-16 (1957).

16. See, e.g., § 36:

Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state Before any city shall incorporate under this act the legislature shall prescribe by law the general limits within which such charter shall be framed. . . .

17. The experience with legislative abuse by special legislation in some states creates a fear of similar abuse in the field of home rule. See MCBAIN, *op. cit. supra* note 9, at 5-12; Walker, *Municipal Government in Ohio Before 1912*, 9 OHIO ST. L.J. 1, 8, 12-13 (1948).

fective mandate to the legislature to act promptly and fairly.¹⁸ Although section 36 was a mandatory provision and, in addition, allowed the legislature to supersede provisions in home rule charters merely by enacting general laws on the same subjects,¹⁹ the Minnesota legislature did not abuse its powers, but granted broad charter-making and substantive powers to municipalities.²⁰

B. PROCEDURAL POWERS

1. *Article IV, Section 36*

Certain weaknesses in the procedural powers enumerated in section 36 hampered both the initial adoption and the operation of home rule charters. A major weakness was the rigidity caused by the procedural detail in the constitutional provision;²¹ most changes in the procedure of adopting a charter could be corrected only by constitutional amendment. Also, the requirement that charter commission members be chosen by district court judges, although an efficient and inexpensive method, did not ensure representation from the entire cross section of the municipality and did not make those chosen responsible to the electorate.²² In other states, the qualified voters of the particular municipality elect charter commission members.²³ In addition, the requirement that the charter commission submit the charter for voter approval within six months of its appointment, if enforced, would not afford

18. Apparently in the "mandatory" states, legislatures have enacted the required statutes; if a legislature should refuse to implement the mandatory provision, however, a court probably would not compel it to do so. An analogous situation is the great hesitancy of courts to require a legislature to obey a constitutional mandate that it periodically reapportion its representation. See *Baker v. Carr*, 369 U.S. 186 (1962); *Magraw v. Donovan*, 163 F. Supp. 184 (D. Minn. 1958); *Smith v. Holm*, 220 Minn. 486, 19 N.W.2d 914 (1945); *State v. District Court*, 141 Minn. 1, 168 N.W. 634 (1918); *State v. Howell*, 92 Wash. 540, 159 Pac. 777 (1916).

19. Section 36 provided that home rule charters "shall always be in harmony with and subject to the constitution and laws of the state of Minnesota." The extent of this legislative supremacy was "unlimited save as to constitutional restrictions." *State ex rel. Erickson v. Gram*, 169 Minn. 69, 71, 210 N.W. 616 (1926); *accord*, *Monaghan v. Armatage*, 218 Minn. 108, 15 N.W.2d 241 (1944); *State ex rel. Carmody v. Reed*, 132 Minn. 295, 156 N.W. 127 (1916).

20. Minn. Sess. Laws 1899, ch. 351. This enabling act remained virtually unchanged while § 36 was in force.

21. Section 36 was so detailed that it was the longest single section in the constitution.

22. See League of Minn. Municipalities, *Toward More Effective Home Rule* 4, Sept. 1957.

23. *Ibid.* See, e.g., OKLA. CONST. art. XVIII, § 3(a), which provides that charter commissioners "be elected by the qualified electors of said city, at any general or special election."

enough time to draft a workable charter.²⁴ Further, the requirement of a four-sevenths majority for the ratification of a proposed charter made adoption of home rule charters extremely difficult.²⁵ This was one of the highest voter approval requirements for home rule in the country; in most states, a bare majority approval suffices.²⁶ Moreover, the requirement that the charter take effect 30 days after voter approval prevented charter commissions from deferring the operation of part of the charter to make such further arrangements as allowing elected officials to serve out the remainder of their terms.²⁷

Since section 36 made no mention of the possibility of abandoning a home rule charter, if one was adopted it was practically irrevocable.²⁸ A home rule municipality could not abandon its existing charter and adopt another one to replace it by use of the original adoption procedures.²⁹ Although a new charter could in effect be adopted by completely amending the old one,³⁰ the amendment procedure under section 36 was extremely difficult.

24. Apparently no sanctions were imposed in those instances where the charter was not submitted within a six month period. As a result, this provision was generally ignored. League of Minn. Municipalities, *Toward More Effective Home Rule* 4, Sept. 1957. Compare OKLA. CONST. art. XVIII, § 3(a), which allows the charter commission only 90 days to submit a proposed charter to the electorate.

25. Four-sevenths of those voting in the election, not just of those voting on the provision, were required. This meant that ratifying a municipal charter was more difficult than amending the state constitution, for which only a bare majority of those voting in the election is needed. MINN. CONST. art. XIV, § 1. The requirement of a majority of those voting at the election was limited in *Godword v. City of Minneapolis*, 190 Minn. 51, 250 N.W. 719 (1933). There the court held that when a charter amendment was submitted for voter approval at a general state-wide election, the vote on the amendment itself constituted a special election, and a failure to vote on the amendment did not constitute a vote against it. This decision does not make clear whether the vote on each amendment when several charter amendments were submitted for ratification at a state-wide election constituted a special election. Whether this decision extended to charters or amendments submitted for voter approval along with other matters at a regular municipal election is equally unclear.

26. League of Minn. Municipalities, *Toward More Effective Home Rule* 4, Sept. 1957; see, e.g., OHIO CONST. art. XVIII, § 8; TEX. CONST. art. XI, § 5.

27. In this way their replacements could be elected at a regular municipal election. By requiring that the charter take effect within 30 days of its approval, a municipality might be forced to hold a special election to elect the new officials. A deferral of the operation of a charter also would allow a municipality to coordinate its new organization with a tax or budget year.

28. League of Minn. Municipalities, *Toward More Effective Home Rule* 4, Sept. 1957.

29. *Leighton v. Abell*, 225 Minn. 564, 31 N.W.2d 646 (1948).

30. *Ibid.* In 1912, for example, St. Paul amended its charter to adopt the commission form of government. MCBAIN, *op. cit. supra* note 9, at 459.

A proposed amendment required approval by a three-fifths majority, a number even greater than that necessary for the original ratification of the charter.³¹ This meant that a municipality might be forced to operate under a charter that no longer satisfied local needs. As a result, municipalities turned to the state legislature, which enacted laws that were general in form but special in effect to solve local problems.³²

An alleged weakness of section 36 was its failure to authorize county home rule. The fact that large numbers of special laws relating to counties were enacted³³ prompted the suggestion that the legislature should be given constitutional authority to grant home rule to counties.³⁴

2. Article XI

The adoption of article XI in 1958 was an attempt to correct the weaknesses inherent in section 36 by giving "the people and the legislature the necessary tools to provide for an effective . . .

31. Under § 36, the amendment of a municipal charter required publication of the proposed amendment for four consecutive weeks "in a legal newspaper of general circulation in such city or village" while original charters could be submitted for voter approval without publication and could be ratified by four-sevenths (57%) of those voting. The publication requirement often proved troublesome as evidenced by the number of attorney general's opinions dealing with the sufficiency of publication. See, e.g., MINN. OPS. ATT'Y GEN. 58-M (June 14, 1949); MINN. OPS. ATT'Y GEN. 277-B-2 (June 11, 1948); MINN. OPS. ATT'Y GEN. 34 (July 30, 1937). *But cf.* *Bowman v. City of Moorhead*, 228 Minn. 35, 36 N.W.2d 7 (1949), where the court found the publication defective, but validated the amended charter and municipal actions thereunder by applying the doctrine of *de facto* corporations.

32. Soon after the adoption of MINN. CONST. art. IV, § 33 (1892), which prohibited special legislation, the legislature began to enact laws that were special in effect, but general in form. See text accompanying notes 95-97 *infra*.

33. Of all laws enacted by the Minnesota legislature during the sessions from 1929 to 1937, approximately 653 (30%) were special laws. Sixty percent of these (393) were special laws affecting counties. Read, *Congestion in the Minnesota Legislature Caused by Requirements of Local Government*, 23 MINN. MUNICIPALITIES 405 (1938).

34. League of Minn. Municipalities, *Toward More Effective Home Rule 5*, Sept. 1957. MINN. CONST. art. XI, § 3, now provides for home rule charters for "any county or other local government unit when authorized by law." This is a permissive provision, however, and the legislature has not enacted statutes enabling counties to obtain home rule. In spite of the apparent need for county home rule demonstrated by the volume of special laws dealing with counties, the extent to which such home rule should be allowed is debatable. Apparently experience with county home rule in other states has been disappointing. See MADDOX & FUQUAY, *STATE AND LOCAL GOVERNMENTS* 497-99 (1962). The desirability of county home rule is beyond the scope of this Note. For general discussions of county home rule, see ADRIAN, *STATE AND LOCAL GOVERNMENTS* 124 (1960); ANDERSON, *LOCAL GOVERNMENT AND FINANCE IN MINNESOTA* 71-72 (1935).

system of local government, containing substantial 'home rule' options."³⁵ Three sections in article XI directly deal with home rule. Section 3 retains the legislative supremacy of section 36 by guaranteeing to local units the basic right to frame home rule charters "in accordance with this constitution and the laws." It provides that a majority of voters in the local unit affected must approve a proposed charter, but allows the legislature to define the necessary majority. It also permits city-county consolidation or separation if approved by the voters in the city and county affected.³⁶ Section 4 grants authority for the establishment of charter commissions and provides that home rule charters can be amended or repealed. Section 5 is a saving clause designed to preserve existing home rule charters.

With regard to the procedural requirements of adopting, amending, superseding, or repealing a charter, article XI is less rigid than its predecessor; these details are not enumerated in the constitutional provision itself, but are supplied by the legislature in enabling legislation enacted pursuant to the constitution.³⁷ The procedural requirements may then be modified to comply with changing municipal needs and conditions by a majority vote in the legislature rather than a constitutional amendment. In addition, by means of the enabling acts, the legislature has corrected many of the defects in the procedural powers provided under section 36. Both charters and amendments may now be adopted by the approval of 55 percent of those voting on the proposal.³⁸ The charter commission is required to submit a draft of a proposed charter for voter approval only "as soon as practicable" after the appointment of the commission,³⁹ not within an arbitrary six months. Thus, the commission is assured of sufficient time

35. League of Minn. Municipalities, *Toward More Effective Home Rule* 7, Sept. 1957. Article XI is quoted in note 10 *supra*.

36. Such consolidation or separation would be accomplished under a county home rule charter. Since county home rule under art. XI is permissive and the legislature has not adopted enabling legislation to effectuate the constitutional permission, consolidation or separation under this provision is not yet possible. League of Minn. Municipalities, *Local Government Consolidation in Metropolitan Area Under Present Constitution and Amendment No. 1*, at 3, Mar. 20, 1958; see note 34 *supra*.

37. See MINN. STAT. §§ 410.01-.27 (1961).

38. MINN. STAT. §§ 410.11-.12 (1961) lower the approval requirements by about two percent for original charters and five percent for charter amendments. In addition, those voting at the election but failing to vote on the charter or amendment no longer effectively vote against it. Perhaps the 55% vote requirement for the adoption of a proposed charter is still too high; in most other states a simple majority approval will suffice to ratify a proposed charter.

39. MINN. STAT. § 410.07 (1961).

in which to draft a sound charter or to determine that a home rule charter is not necessary or desirable for the municipality involved. Moreover, the commission may defer the operation of the charter to make such arrangements as allowing incumbent officials to serve out their terms since the effective date of the charter may be stated in the charter itself.⁴⁰

Certain weaknesses in the procedure of adopting and amending charters still exist, however, because the legislature has failed to fully exercise the powers granted to it by article XI.⁴¹ One weakness is that charter commissioners are still appointed by district court judges rather than elected.⁴² A bill was introduced during the 1961 legislative session enabling municipalities to provide in their charters for the popular election of commission members to fill vacancies upon the expiration of terms of incumbent members.⁴³ If such a provision for the election of commission members is desirable, it would seem to be equally desirable to provide for the election of charter commissioners when the commission is initially formed. Election of commissioners should at least be provided as an alternative to appointment; a municipality itself could then decide which is the better method of selecting charter commissioners.

A second weakness is that the legislature has failed to clarify the provision in article XI whereby "a local unit may repeal its home rule charter and adopt a statutory form of government or a new charter." If a local governmental unit repeals its existing charter, whether it may return to a statutory form of government in the absence of legislation is doubtful since the only statutory provisions, other than home rule, for the incorporation of municipalities apply solely to villages and to cities of the fourth class.⁴⁴

40. MINN. STAT. § 410.11 (1961). If no effective date is specified in the charter, it becomes effective 30 days after it is ratified. Section 36 required the charter to become effective *automatically* 30 days after it was ratified by the voters.

41. Many minor defects are present in the home rule enabling act that should be corrected, primarily in the interest of clarity. For example, the enabling act does not make clear whether a charter commission must submit a charter to the voters at all. See generally 45 MINN. MUNICIPALITIES 151-52 (1960).

42. MINN. STAT. § 410.05 (1961).

43. H.F. 1000, Minn. 1961 Sess. This bill was referred to the Committee on Municipal Affairs but was not enacted. Since many charter commissions have almost a continuous existence, Professor Anderson has suggested that the voters at least be given the power to recall the commissioners appointed by judges and elect persons who are more responsive to local opinion and needs. ANDERSON, LOCAL GOVERNMENT AND FINANCE IN MINNESOTA 69-70 (1935).

44. MINN. STAT. §§ 411.01, 412.011 (1961).

Article XI provides that municipalities may have the option of returning to a statutory form of government. If the legislature would implement this provision by allowing all municipalities to return to their old forms of government should home rule prove unsuccessful, more of them might be encouraged to adopt home rule.

Finally, the procedure for amending a charter is still difficult and may result in municipalities operating under antiquated charters. A solution adopted in other states is to allow charters to be amended by municipal ordinances subject to a referendum upon a petition of the voters.⁴⁵ The League of Minnesota Municipalities has recommended that the legislature adopt this procedure as an optional method of amendment.⁴⁶ This would enable a municipality to amend its charter to meet an emergency situation quickly and to solve routine problems without incurring the expense of putting a proposed amendment on the ballot in a municipal election.⁴⁷ In addition, this method would permit existing charters to be more easily brought up to date.⁴⁸ The proposal includes safeguards against the abuse of the amendment process—it prohibits amendments in those areas that, by their nature, should not be subject to changes made in haste and thus warrant the use of a more difficult amendment procedure,⁴⁹ and in all other areas, it subjects amendments to the right of referendum.⁵⁰ Moreover, if an amendment is adopted that proves to be inadequate, it may easily be superseded by a subsequent amendment.

45. *E.g.*, KAN. CONST. art. 12, § 5; WIS. STAT. § 66.01(2) (1961). See *State ex rel. Coyle v. Richter*, 203 Wis. 595, 234 N.W. 909 (1931), where the city of Chippewa Falls, by charter ordinance, changed the form of the city government from the commission to the aldermanic form.

46. League of Minn. Municipalities, Legislative Proposals Adopted at the Legislative Conference 4-5, June 22, 1962. The League proposed a similar bill during the 1961 legislative session. See H.F. 1000, Minn., 1961 Sess. § 9. This bill narrowly missed passing the House of Representatives.

47. For example, the Minneapolis home rule charter prevented the city from mailing paychecks to its employees. Rather than resorting to an election, the city turned to the legislature and obtained a special law authorizing the mailing of such checks. See Minn. Sess. Laws 1955, ch. 462. Under the League proposal, this authority could have been obtained by an ordinance.

48. A major purpose of the proposed legislation is to allow a municipality to "clean up" its old charter in a summary manner by removing minor restrictions in the charter that are of no importance. League of Minn. Municipalities, Legislative Proposals Adopted at the Legislative Conference 4, June 22, 1962.

49. These areas include, *inter alia*, amendments to change the basic form of the city government, to increase the tax levy limit, to authorize new taxes, or to increase the salary of any municipal official.

50. See MINN. STAT. § 410.12 (1961). Additional protection is provided by the requirement of a two-thirds majority and by public hearing and publication requirements.

C. SUBSTANTIVE POWERS

The substantive powers that a home rule municipality may exercise under its charter may either be defined broadly in the constitutional home rule provision or in the enabling acts,⁵¹ or in addition to this broad grant, certain powers may be specifically enumerated either in the constitutional provision or the enabling acts.⁵² Although a broad grant of power provides flexibility,⁵³ it tends to create uncertainty over the scope of the municipality's substantive powers, which is usually resolved only by litigation.⁵⁴ This was true in Minnesota under section 36. The enabling act itself⁵⁵ was first attacked because it did not specifically enumerate the limits of municipal power under home rule charters.⁵⁶ The Minnesota Supreme Court upheld the statute, stating that the constitution required the legislature to prescribe limits "beyond which the charter may not go," and since the legislature had prescribed such limits, it was "not for the court to say that other and further limits or restrictions should have been imposed."⁵⁷ This attack failing, the exercise of particular municipal powers was challenged

51. For example, the American Municipal Association has proposed a model constitutional provision containing a broad grant of substantive powers that "is designed to obviate both resort to constitutional specificity and the need to appeal to the legislature for enabling legislation." Fordam, *Home Rule—AMA Model*, 44 NAT'L MUNIC. REV. 137, 140 (1955).

52. These specific powers include, *inter alia*, those to make police and sanitary regulations, to levy taxes, to issue bonds, and to organize and administer public schools. The National Municipal League has proposed a model state constitutional provision that contains both a broad grant of power and an enumeration of some of the powers granted to municipalities. See Bromage, *Home Rule—NML Model*, 44 NAT'L MUNIC. REV. 132, 134 (1955).

53. See MOTT, *op. cit. supra* note 11, at 18-19.

54.

No more obvious conclusion can be drawn from the study of the difficulties that have arisen in the home rule states than that the grant of powers to cities in general terms has been the origin of the chief complications that have arisen. . . . It is a plain fact that under any general phrase that makes a direct constitutional grant of home rule the scope of powers actually conferred must be defined by the courts.

This means uncertainty, delay, and expensive litigation.

MCBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* 669-70 (1916). McBain proposed that an enumeration of those powers that have frequently been the subject of litigation should be added to the constitutional provision. *Id.* at 672; *accord*, Bromage, *supra* note 52.

55. Minn. Sess. Laws 1899, ch. 351.

56. State *ex rel.* Getchell v. O'Connor, 81 Minn. 79, 83 N.W. 498 (1900).

57. *Id.* at 86, 83 N.W. at 500. The court said that to adopt the contention that the act should prescribe limits on each topic with which a charter could deal "would wholly nullify the purposes intended to be subserved and secured by the constitution." *Id.* at 85, 83 N.W. at 500; *accord*, Park v. City of Duluth, 134 Minn. 296, 159 N.W. 627 (1916).

in subsequent cases.⁵⁸ As a result of such litigation, the Minnesota Supreme Court has, to a large extent, defined the scope of substantive powers under section 36.

Under article XI, the legislature retains its supremacy over local governmental units. The enabling act under article XI does not differ materially from the one under section 36.⁵⁹ Thus, in absence of judicial decisions under article XI and its enabling act, the scope of home rule powers does not appear to have been changed.

In determining whether a particular exercise of municipal power is within the scope of the substantive powers granted by the constitution and the enabling act, the Minnesota court applies three tests. First, the power must not be "expressly or impliedly withheld" by the constitution or laws of the state.⁶⁰ Thus, if a general law and a charter provision conflict, the general law will prevail unless the charter provision can be interpreted in harmony with the general law⁶¹ or the two differ only as to details.⁶² Second, the power must be exercised within the territorial limits of the municipality.⁶³ Third, the exercise of the power must be over a matter of municipal concern.⁶⁴

The Minnesota court regards the following as legitimate, sub-

58. See notes 65-70 *infra*.

59. Compare MINN. STAT. § 410.07 (1961), with Minn. Sess. Laws 1899, ch. 351, § 1.

60. State *ex rel.* Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (1958). Under § 36, "general laws relating to affairs of cities . . . shall be paramount while in force to the provisions relating to the same matter included in the local charter. . . ."

61. See Board of Educ. v. Houghton, 181 Minn. 576, 233 N.W. 834 (1930), where a city charter provision that no public improvement could be made until approved by the city planning commission was held inapplicable to school improvements, since otherwise the city officials would have a veto over a matter of state concern.

62. See Grant v. Berrisford, 94 Minn. 45, 101 N.W. 940 (1904), where a conflict between a charter provision and a state statute over the time limit for presenting claims against a surety for a contractor engaged in the construction of public improvements did not invalidate the charter provision. *But cf.* American Elec. Co. v. City of Waseca, 102 Minn. 329, 113 N.W. 899 (1907).

63. See City of Duluth v. Orr, 115 Minn. 267, 132 N.W. 265 (1911), where the court invalidated an ordinance regulating the storage of explosives because it applied to an area extending one mile beyond the city limits.

64. "The general rule is that, in matters of *municipal concern*, home rule cities have all the legislative power possessed by the legislature of the state . . ." State *ex rel.* Town of Lowell v. City of Crookston, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (1958). (Emphasis added.)

stantive municipal powers: police powers,⁶⁵ taxing powers,⁶⁶ the right of eminent domain,⁶⁷ the regulation of local elections,⁶⁸ and the regulation of service and rates of public utilities.⁶⁹ Whether a municipality may restrict its tort liability is unclear.⁷⁰ The

65. *City of Duluth v. Cervený*, 218 Minn. 511, 16 N.W.2d 779 (1944); *State ex rel. Zien v. City of Duluth*, 134 Minn. 355, 159 N.W. 792 (1916); *Thume v. Hetland*, 114 Minn. 395, 131 N.W. 372 (1911); *State ex rel. Freeman v. Zimmerman*, 86 Minn. 353, 90 N.W. 783 (1902).

66. *Ramaley v. City of St. Paul*, 226 Minn. 406, 33 N.W.2d 19 (1948); *State ex rel. City of Minneapolis v. Erickson*, 157 Minn. 200, 195 N.W. 919 (1923).

67. *Northern Pac. Ry. v. City of Duluth*, 153 Minn. 122, 189 N.W. 937 (1922); *State ex rel. Ryan v. District Court*, 87 Minn. 146, 91 N.W. 300 (1902).

68. *Brown v. Smallwood*, 130 Minn. 492, 153 N.W. 953 (1915); *McEwen v. Prince*, 125 Minn. 417, 147 N.W. 275 (1914); *Farrell v. Hicken*, 125 Minn. 407, 147 N.W. 815 (1914).

69. *St. Paul Book & Stationery Co. v. St. Paul Gaslight Co.*, 130 Minn. 71, 153 N.W. 262 (1915); *City of St. Paul v. Robinson*, 129 Minn. 383, 152 N.W. 777 (1915).

For early discussions of court-approved municipal powers, see *McBAIN, op. cit. supra* note 54, at 465-80; *MCGOLDRICK, LAW AND PRACTICE OF MUNICIPAL HOME RULE* 97-112 (1933); *Anderson, Municipal Home Rule in Minnesota*, 7 *MINN. L. REV.* 306, 308-13 (1923); *Dawley, Special Legislation and Municipal Home Rule in Minnesota: Recent Developments*, 16 *MINN. L. REV.* 659, 672-78 (1932).

70. This problem was first raised in *Schigley v. City of Waseca*, 106 Minn. 94, 118 N.W. 259 (1908). *Waseca's* home rule charter exempted the city from liability for defective streets and sidewalks unless it had written notice of a defect at least ten days prior to an injury, and the court sustained *Waseca's* demurrer on the ground that the complaint failed to allege such notice. The court regarded this restriction of the city's tort liability as having "the force and effect of a direct act of the legislature. . . ." *Id.* at 102, 118 N.W. at 262; *accord*, *Fuller v. City of Mankato*, 248 Minn. 342, 80 N.W.2d 9 (1956). While neither *Schigley* nor *Fuller* have been expressly overruled by subsequent decisions, the legislature has invalidated charter provisions that prescribe "the form, manner or duration" of such notice. *MINN. STAT. § 465.121* (1961). Although the court has never expressly said that a home rule charter may not limit municipal tort liability, dictum in *Stevens v. Lycan & Co.*, 259 Minn. 106, 105 N.W. 2d 889 (1960), indicates that the court would probably hold that a municipality cannot limit its tort liability in any manner.

Various attempts have been made in home rule charters . . . to limit the liability of municipal corporations in this [tort liability] area. We have upheld the validity of such charter provisions. They have now been invalidated by our legislature

Id. at 108-09, 105 N.W.2d at 891 (1960).

The issue is further complicated by the recent case of *Spanel v. Mounds View School Dist. No. 621*, 118 N.W.2d 795 (Minn. 1962). There the court upheld the doctrine of sovereign immunity from tort liability as applied to that case, but prospectively overruled the doctrine as it has been conferred by judicial decision upon local governmental units with respect to torts committed subsequent to the adjournment of the 1963 legislative session. This prospective overruling was made subject to any statutes on the subject, whether presently in existence or subsequently enacted. Since the court in *Schigley* held that home rule charter provisions had

court does not consider the administration of justice a matter of municipal concern.⁷¹ Consequently, home rule municipalities may not establish municipal courts,⁷² remove a municipal judge⁷³ or justice of the peace⁷⁴ from office, punish for contempt,⁷⁵ abrogate common-law or equitable rules,⁷⁶ or confine nontransitory actions to a specified court.⁷⁷

II. SPECIAL LEGISLATION

A. HISTORICAL BACKGROUND

Special laws are those that apply only to particular persons, things, or localities within a given class. These laws may deal either with private matters, such as changing a person's name, granting a divorce, or chartering a private corporation,⁷⁸ or with local problems of a particular municipality, such as authorizing the construction of a sewer disposal plant or correcting the irregularities in a local bond issue.⁷⁹

the force and effect of legislative acts, such provisions may be exempt from the effect of the *Spanel* decision. The unwillingness of the court in *Spanel* to follow the "archaic doctrine" of sovereign immunity, however, indicates that the court would probably overrule the *Schigley* and *Fuller* cases.

71. See *State ex rel. Rosckes v. Dreger*, 97 Minn. 221, 106 N.W. 904 (1906).

72. *Gordon v. Freeman*, 112 Minn. 482, 128 N.W. 834 (1910); *State ex rel. Simpson v. Fleming*, 112 Minn. 136, 127 N.W. 473 (1910); *State ex rel. Schissler v. Porter*, 53 Minn. 279, 55 N.W. 134 (1893). See also MINN. CONST. art. VI, § 1, which vests the judicial power of the state in a "supreme court, a district court, a probate court, and such other courts . . . with jurisdiction inferior to the district court as the legislature may establish." *But cf.* MINN. STAT. § 488.03(3) (1961). This provision establishes a municipal court in "each city, village, and borough without a municipal court which is a county seat or which has 1,000 or more inhabitants . . .," but provides that such a court is not organized until the governing body of the unit approves it by resolution of four-fifths of its members; therefore, the municipality itself brings the municipal court into existence.

73. *State ex rel. Simpson v. Fleming*, 112 Minn. 136, 127 N.W. 473 (1910).

74. *State ex rel. Dann v. Hutchinson*, 206 Minn. 446, 288 N.W. 845 (1939).

75. *State ex rel. Peers v. Fitzgerald*, 131 Minn. 116, 154 N.W. 750 (1915).

76. See *Laird Norton Yards v. City of Rochester*, 117 Minn. 114, 134 N.W. 644 (1912).

77. See *Hjelm v. City of St. Cloud*, 129 Minn. 240, 152 N.W. 408 (1915).

78. See, e.g., Minn. Spec. Laws 1867, ch.1 (amending the charter of a private corporation); Minn. Spec. Laws 1867, ch. 150 (changing the names of various persons); Minn. Spec. Laws 1866, ch. 116 (authorizing a guardian of a certain minor to sell real estate).

79. See, e.g., Minn. Spec. Laws 1866, ch. 54 (authorizing the county

The advantage of special legislation is that it "often fills a need for localized treatment of a legislative problem."⁸⁰ Since municipalities differ in size, population, and economic conditions, their problems cannot always be solved by general laws. Thus, if a particular municipal problem is one that cannot be solved by the powers granted under a home rule charter, a special law may be the only solution.⁸¹ In addition, the legislature may pass curative laws, which are special in nature, to cure irregularities or defects in prior acts.⁸²

A major disadvantage of special legislation is the tendency of the legislature to enact many special laws where one general law would serve as well. At one time, "the legislature passed so many special laws each session that publication of a separate volume of special laws was required in addition to a somewhat smaller volume of general laws."⁸³ Such a large number of special laws reduces the time that legislators have to devote to more important legislation. Moreover, the legislators may not have time to notify communities affected by such laws before they are passed. This may enable special interest groups to secure favorable legislation that the community affected would not approve. Finally, because special laws affect only a particular locality, legislators may be willing to trade votes to ensure that bills affecting their own locality will or will not be enacted.⁸⁴ As a result of these defects, several attempts have been made to restrict and even prohibit the use of special legislation.⁸⁵

Since special legislation can be justified only when it is used to deal with local problems of a municipality, prohibitions have been

commissioners of Martin County to issue bonds); Minn. Spec. Laws 1865, ch. 59 (authorizing Ramsey and Hennepin Counties to build and maintain a bridge).

80. Peterson, *Home Rule Committee Endorses Amendment No. 1*, 43 MINN. MUNICIPALITIES 161 (1958).

81. See *City of Duluth v. Orr*, 115 Minn. 267, 132 N.W. 264 (1911), where an ordinance passed by a home rule municipality was invalidated because the effect of the ordinance extended beyond the city's territorial limits. The goal sought by the city could be attained today by a special law.

82. See Anderson, *Special Legislation in Minnesota*, 7 MINN. L. REV. 133, 188-91 (1923).

83. League of Minn. Municipalities, *Toward More Effective Home Rule* 2, Sept., 1957.

84. "[I]f a bill is agreeable to the legislators from the district affected and has been approved by the governing body of the local government unit concerned, the bill is generally not opposed by other legislators, because they are not directly concerned." *Ibid.*

85. The abuses of special legislation and the need to restrict its usage were discussed as early as the Minnesota constitutional convention of 1857. See Anderson, *supra* note 82.

directed largely against the private laws. More than a century ago, the legislature was denied the power to grant divorces⁸⁶ and to charter private corporations.⁸⁷ Special laws were prohibited in several other areas in 1881.⁸⁸ Although these amendments were successful in eliminating the private laws, local laws continued to be enacted in great volume. "Special legislation, while changing somewhat in character, actually increased in quantity."⁸⁹

The discontent caused by the continued volume of special legislation prompted a constitutional amendment in 1892 to prohibit special laws on several additional subjects.⁹⁰ Besides prohibiting other types of private laws, this amendment also prohibited local laws. Moreover, the amendment stated that "in all cases when a general law can be made applicable no special law shall be enacted."⁹¹ This clause was not intended to apply solely to those subjects specifically named in the remainder of the amendment,⁹² but was to prohibit special laws on subjects, similar to those specified, "which might have been omitted through oversight."⁹³ This amendment was initially successful in halting the flow of special laws.⁹⁴ In fact, because the prohibition on local laws caused many municipal problems to remain unsolved, it helped to bring about home rule in Minnesota.

When municipalities found that home rule charters did not enable them to solve all their local problems, they again turned to the legislature for help. The legislature responded by enacting laws that were general in form but special in effect. These "general-special" laws classified local governmental units according to population, area, assessed valuation, or other criteria; the classification, however, was designed to include only particular municipalities.⁹⁵ The Minnesota court has generally upheld these laws, say-

86. MINN. CONST. art. IV, § 28 (1857).

87. MINN. CONST. art. X, § 2 (1857).

88. MINN. CONST. art. IV, § 33 (1881), prohibited special laws in 11 areas, including such private matters as changing names, granting corporate powers, and authorizing the sale of real estate by minors, and such public matters as vacating streets, incorporating towns and villages, and changing county seats. Art. IV, § 34, states that "the legislature shall provide general laws for the transaction of any business that may be prohibited" by § 33.

89. Anderson, *supra* note 82, at 134.

90. MINN. CONST. art. IV, § 33 (1892).

91. The amendment left to the courts the question of whether a general law could have been made applicable.

92. State *ex rel.* Board of Courthouse & City Hall Comm'rs v. Cooley, 56 Minn. 540, 546, 58 N.W. 150, 151 (1894).

93. Anderson, *supra* note 82, at 142.

94. Anderson, *supra* note 69, at 306.

95. See, e.g., Minn. Sess. Laws 1945, ch. 482, § 1(9), which governed the sale of intoxicating liquor in certain counties. It applied to:

ing that classifications should not be disturbed unless "clearly arbitrary and without reasonable basis."⁹⁶ Despite the prohibition on local laws, the number of these general-special laws steadily increased.⁹⁷

This increase in the volume of these general laws that are special in effect not only resulted in the normal disadvantages of special legislation,⁹⁸ but also created additional problems. Since such laws were general in form, they did not name the municipalities to which they applied. As the number of these laws increased, they became virtually impossible to locate in the session laws,⁹⁹ and the status of the law applicable to a particular municipality could not be readily determined. A further difficulty was that a municipality might "outgrow" a particular classification. For example, if a law classified municipalities according to population, a mere change in population would make that law inapplicable to the municipality for which it was designed. Similarly, the population of another municipality might increase so that the municipality was within the purview of a law never intended to apply to it. Finally, since special legislation was again available in the form of general laws, municipalities would try to obtain such laws to solve their problems rather than utilize the substantive powers provided by home rule charters.¹⁰⁰

cities of the fourth class situated in any county in this state having not less than 100 nor more than 110 full and fractional congressional townships and having a population of not less than 13,000 nor more than 15,000 inhabitants according to the last federal census.

Some of these general-special laws actually contain the name of the unit to which they apply. See, e.g., Minn. Sess. Laws 1955, ch. 462, which applies to cities of the first class having at least 450,000 inhabitants and specifies that "Minneapolis may pay employees by mailing check."

96. *Williams v. Rolfe*, 114 N.W.2d 671, 678 (Minn. 1962), 76 HARV. L. REV. 652 (1963). In this case the constitutionality of a law was challenged on the ground that it was a special law in violation of MINN. CONST. art. IV, § 33 (1892), since it contained classification requirements that only Cass County could satisfy. The court stated that merely because a law applies to only one county does not make it a special law; it must be shown that "other counties similarly situated and having like need for similar legislation are arbitrarily excluded." 114 N.W.2d at 678.

97. In general, there has been an increase in the total number of general-special laws enacted from session to session. During 1957, at least 269 of them (27% of all legislation) were enacted. League of Minn. Municipalities, *Toward More Effective Home Rule 2, Sept., 1957*.

98. See text accompanying notes 83-85 *supra*.

99. Unlike most general laws, these laws were not codified.

100. League of Minn. Municipalities, *Toward More Effective Home Rule 2, Sept., 1957*. For a more detailed development of special legislation in Minnesota prior to the adoption of art. XI, § 2, see Anderson, *supra* note 82, at 187; Dawley, *supra* note 69.

B. ARTICLE XI

Section 2 of article XI was in part enacted to eliminate the problems created by general laws that are special in effect.¹⁰¹ Although this amendment has not reduced the number of special laws,¹⁰² it has succeeded in eliminating many of the problems that go with them. It specifically allows the legislature to enact special laws relating to local governments if the unit affected approves the law.¹⁰³ Thus special interest groups can no longer push through special laws without the knowledge or consent of the municipality affected.¹⁰⁴ Since the special law must name the unit affected, the problem of ascertaining the status of the law regarding a given municipality is minimized,¹⁰⁵ and municipalities can no longer outgrow a needed law or grow into an unneeded one.

Section 2 of article XI, however, is not the final answer to the problem of special legislation. Certain defects exist under this amendment that should be corrected by further legislative action or possibly even by further constitutional amendment. Most of these problems have their origin in the part of section 2 that allows the legislature to enact special laws, but states that "a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body"

One problem concerns the interpretation of the words "approval by the affected unit." If a special law pertains to more than one municipality, it is uncertain whether each municipality is an affected unit or whether the combination of municipalities is the affected unit.¹⁰⁶ If approval by a majority of the combination

101. For the text of this provision, see note 10 *supra*. Article IV, § 33, was amended to be consistent with art. XI; but the prohibitions against private laws in art. IV, § 28, and art. X, § 2, have not been changed.

102. The number of special laws enacted per session since the amendment remains about the same. In 1961, 260 laws, or about 30% of all laws enacted, were special laws. League of Minn. Municipalities, Analysis of Special Legislation Enacted by the 1961 Minnesota Legislature 1, Feb. 8, 1962. This compares with 269 general-special laws enacted in 1957. See note 97 *supra*.

103. See MINN. STAT. § 645.021 (1961), which provides the details regarding local approval.

104. *But see* art. XI, § 2, which allows the legislature to provide by general law that no local approval is required.

105. The problem of finding a special law or determining the legal status of a given municipality does exist to a lesser extent because special laws are not codified. However, MINN. STAT. § 482.07(1) (1961), provides for a table arranged by affected local governmental unit to be included in the session laws giving approval dates of all special laws approved during the two year period included in the volume.

106. For example, if a special law seeks to create a hospital district for

of municipalities affected would be sufficient, the requirement of local approval would be much easier to satisfy than if each municipality had to approve. While there have been no judicial decisions on this issue, the intent of section 2 seems to be that, absent general laws to the contrary, each municipality affected must individually approve a special law.¹⁰⁷

The legislature should consider proposing an amendment to modify its right to eliminate or alter the necessity of local approval of special laws.¹⁰⁸ This right should be restricted to only those instances where a special law affects multiple units.¹⁰⁹ Local approval of such a law by all affected units may be either unnecessary or impractical to obtain, yet failure to obtain the consent of one unit may prevent the law from taking effect.¹¹⁰ However, where a special law affects only one unit, the approval requirement should be mandatory and not subject to elimination or alteration by general law. The one instance where the legislature should exercise its present right to entirely remove the requirement of local approval arises where special laws affecting multiple units are purely enabling in nature.¹¹¹ Such laws do not require a

all cities, villages, and townships in the area of Hennepin County, whether each local governmental unit must consent or whether approval by a majority of the combined units will suffice is unclear.

107. In a memorandum published before the adoption of article XI in 1958, the League of Minnesota Municipalities explained that "the approval thus required could be given by either the governing body of the affected unit *or units* or the voters." League of Minn. Municipalities, Detailed Comparison of Amendment No. 1 and Present Constitution, appendix, May, 1958. (Emphasis added.)

108. The language of art. XI, § 2, does not place any restrictions upon the legislature's right to enact general laws altering or eliminating the local approval requirement. In enacting such laws, however, the legislature must be careful to make them general in form, for if they fit the § 2 definition of special laws, they will also require local approval. It is questionable whether the legislature could validly remove the requirement of local approval in all instances since this would clearly be against the intent of § 2. But the possibility that the court would uphold such legislative abuse cannot be overlooked, especially in view of the abuse of classification that was practiced and condoned under MINN. CONST. art. IV, § 33 (1892). See note 96 *supra* and accompanying text.

109. See, *e.g.*, Minn. Extra Sess. Laws 1961, ch. 90, § 3, which provides for the creation of a sanitary sewer district for six villages and cities. This law has been approved by all affected units and thus has become effective.

110. See, *e.g.*, Minn. Sess. Laws 1959, ch. 552, which provides for the creation of a nursing district for 43 cities, villages and townships. This law has never become effective because it has not been approved by all affected units.

111. An example of such a special law is Minn. Extra Sess. Laws 1961, ch. 90, § 3, which provides that the governing bodies of any two or more of the six affected units may create a sanitary sewer district, but does not require the municipalities to take this action.

local unit to take any action; they only allow a unit to take advantage of the legislative provisions if it wishes. Since no obligations are imposed upon a unit by such laws, there is no reason to allow the unit to withhold consent and deprive other consenting units of the benefits of the law.

Where special laws affecting multiple units are not of the purely enabling type but impose positive obligations upon the named units,¹¹² local approval should be retained, but the legislature should make such approval easier to obtain. Both aims may be accomplished if the legislature would enact a general law substituting for individual consent a requirement of approval by a certain majority both in number and in aggregate population of all units affected.¹¹³ Of course, an element of coercion would exist under this proposal, for a special law could be forced upon a nonconsenting unit if the approval requirements were met. The harshness of this possibility, however, is mitigated by the fact that each unit would participate in determining the presence of local approval. Moreover, since majority approval both in number of units affected and in population would be required, units with disproportionate populations would be protected from each other.¹¹⁴

CONCLUSION

The adoption of article XI by amendment in 1958 effectuated a major change in the area of local government. This amendment affords a sound basis for municipal home rule and special legislation and establishes a workable balance between them. Municipalities may now function with less legislative aid or interference since home rule charters are easier to obtain and amend, and special legislation remains available to solve local problems that cannot be solved under home rule charters. However, certain weaknesses still exist: the appointment of charter commissioners by district court judges does not ensure that the commission is responsible to

112. For example, such a law might impose a sanitary sewer district upon a group of municipalities. This law would be different from an enabling law since it would impose positive obligations upon each named unit.

113. Thus, assuming that the legislature provided for a simple majority, if a law would affect nine municipalities with a total voting population of 100,000, approval by the voters of at least five of the municipalities and by a majority of all voters would be necessary for approval.

114. For example, if a special law affected five units, one with voting population of 100,000 and the remainder with voting population of 2,500 each, the large unit could not force adoption of the law alone simply because it contained a majority of the affected population. Conversely, the four smaller units could not combine to force the law's adoption solely because they comprised a majority of the affected units.

the electorate; the failure to provide an adequate procedure under which a municipality may repeal a home rule charter and return to a statutory form of government may discourage the initial adoption of home rule; the procedure for amending a charter to solve both routine and emergency problems is too difficult; the local approval requirement for special laws, in many cases, prevents needed municipal reforms. The legislature should utilize its power under article XI to correct these weaknesses and thereby assure the continuing development of local government in Minnesota.

