Metropolitan Government: Minnesota's Experiment with a Metropolitan Council

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Existing governments have little relation to the region as such, which in organizational terms is amorphous and un-crystallized. The metropolitan area has no capital, courthouse, or city hall, no corporate existence, no body, no soul, no sense of being, indeed no being in any concrete meaning of the term. Al Smith was from the sidewalks of New York, not from the sidewalks of the New York-Northeastern New Jersey Standard Consolidated Area. Davenport-Rock Island-Moline is not a place name but a shelter designed to afford the statistician refuge from political fallout.

I. INTRODUCTION

Relocations in population, industry, finance, and racial balances have created metropolitan problems of staggering magnitude. The great needs for more and better housing, transportation, crime prevention, sanitation, pollution control, recreation and education programs have motivated governmental responses from many levels. However, such responses have often been handicapped by structural defects in the various systems of government involved, such as the multitudinous fragmentation and overlapping nature of governmental units in our metropolitan areas and their lack of resources to attack area-wide problems. The relationship among units is often characterized by competition rather than coordination and interests of the metropolitan area as a whole go without consideration in the decisions of any single unit. Attempts are being made on two fronts to cure the

problems of fragmented government in metropolitan areas. The first is an attempt to revamp and reorganize local governments. The second is recent federal legislation which has imposed as a condition to receiving federal funds for various projects, the establishment of a metropolitan wide regional coordinating agency.

In response to multijurisdictional metropolitan problems and the incentive of federal funding, Minnesota has created a unique experiment in metropolitan area government, the Metropolitan Council. It is the purpose of this Note to examine the problems of fragmented government in metropolitan areas and to analyze and evaluate three of the significant schemes devised to remedy these problems. Particular emphasis will be devoted to the Metropolitan Council as a governmental device which provides a framework to meet area-wide problems.

II. FRAGMENTATION: PROBLEMS AND PARADOXES

A. The Spillover Effect

An economic premise known as the "spillover effect" is inherent in metropolitan areas governed by fragmented and overlapping governmental units. This concept is often used to describe the benefits and detriments which accrue to one community in the metropolitan area as a result of another unit's action or inaction. To illustrate, numerous activities of the central city benefit the suburbs, such as mass transit and traffic control which benefit the suburban commuter. Similarly, efficient sewage treatment in one suburban jurisdiction along a river will benefit another downstream. Finally, the benefits derived from functions such as public health measures or the operation of a first-rate school system in one jurisdiction clearly inure to the entire metropolitan area.

However, the frequent lack of identity between the population which receives substantial immediate or indirect benefits

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7. ACIR, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS (1962) [hereinafter cited as ACIR, ALTERNATIVE APPROACHES]; COMMITTEE FOR ECONOMIC DEVELOPMENT, MODERNIZING LOCAL GOVERNMENT (1966).
10. J. BOLLENS, supra note 9, at 367.
and the jurisdiction which finances the project makes it impossible to relate services and benefits to taxes. Thus, the city dweller may be taxed for roads and transportation facilities used primarily by commuters, and the suburbanite who lives upstream may be taxed to clean up an already polluted river which flows into other jurisdictions. In addition, local government units may be reluctant to undertake building certain public facilities if the decision makers are aware that the facilities will benefit an area beyond the taxing jurisdiction. Alternatively, if it does construct public facilities, there may be attempts, subject to constitutional questions, to exclude outsiders and preserve the facility for those who paid for it. There is also the difficulty encountered in financing solutions to present local needs since the central city—often the “breeder” of area economic activity—can not tax or control significant portions of the wealth it generates and much of this wealth flows to the jurisdictionally independent suburbs.

This pattern of development produces serious financial inequities in the metropolitan area. People of similar socioeconomic status living in similar housing, yet residing in different jurisdictions may pay vastly different prices for the cost of local government services received. Thus, the exodus from the central city of the relatively higher income groups and the corresponding migration to the city of relatively lower income

11. B. FRIEDEN, supra note 9, at 6.
13. See, e.g., Schreiber v. City of Rye, 53 Misc. 2d 259, 278 N.Y.S.2d 527 (Westchester County Ct. 1967). Plaintiff, a resident of another city, applied for and was refused a permit to use a municipal golf course and swimming pool acquired and maintained by public funds from the City of Rye. Plaintiff claimed that the restriction of the use of public facilities to residents of the city was an unlawful discrimination in violation of the equal protection clause of the fourteenth amendment. The court rejected this argument and held that the city had wide discretion in the classification of persons who may benefit from public facilities, and that the discrimination was not invidious.
15. Sherwood, Some Major Problems of Metropolitan Areas, in METROPOLITAN CALIFORNIA, GOVERNOR'S COMMISSION ON METROPOLITAN AREA PROBLEMS 18 (E. Engelbert, ed. 1961). The author states: “[T]hough the City of Los Angeles may have 10,000 times the population of the City of Vernon, it has only 20 times the assessed valuation. The property tax base in Vernon amounts to $1,000,000 per person, approximately; in Los Angeles it is $1,000.” See also R. Wood, THE METROPOLIS AGAINST ITSELF 23–39 (1959).
groups results in increased costs to the city in terms of housing and welfare accompanied by a diminished revenue potential. Similarly the wealth of suburbs varies. The problem from the point of view of many suburbs which have absorbed the major share of the total growth in the nation is how to accommodate the increasing demand for public services. Suburbs must provide many new services, such as roads, schools, and sewage facilities requiring large capital expenditures.

One result of this disparity, not only between the central city and the suburbs but also among suburbs is competition among local jurisdictions for tax revenue-producing activities and land uses. One author described the use of zoning as a control to guide growth in this context as "municipal mercantilism" or a "beggar-thy-neighbor policy." The goal is to preserve existing property values and tax base and in the alternative or simultaneously, depending on the circumstances, pursue industrial promotion policies. A community often is able, through zoning and planning, to apportion the land within its territory between "net-revenue-producing" and "net-revenue-using" property and thereby attempt to achieve a balance. Therefore, the initial decision on future industrial or residential development in suburban areas often turns on the question of whether the property tax received by the municipality exceeds and offsets the cost of providing government services, with no consideration of the metropolitan area as a whole.

Furthermore, evidence of detrimental aspects of the spillover effect may be found in parochial local ordinances governing land use which are inconsistent with metropolitan interests. For example, municipalities have used zoning ordinances to prohibit certain land uses deemed objectionable, or have imposed min-

16. The ACIR 1968 LEGISLATIVE PROGRAM 259-63 (1967) suggests legislation under which a state could, by devising a distribution formula based upon tax load, channel state aid to those districts with the highest effective tax rates. The goal of this legislation is to equalize fiscal disparities without disturbing local governmental organization.
18. Id. at 77.
19. Walker, supra note 5, at 496.
20. Certain California cities have, through the use of municipal powers, profited at the expense of the metropolitan area. Examples include municipal encouragement of draw poker contrary to a general prohibition, promotion of an industrial haven, and the preservation of agricultural uses (dairy) through zoning. Sherwood, supra note 15, at 18.
21. Often prohibited uses are struck down by the courts because of the demonstrable social utility of the use. See, e.g., University Heights v. Cleveland Jewish Orphans Home, 20 F.2d 743 (8th Cir.), cert. denied,
minimum lot size requirements to exclude families with lower income. Illustrative of the latter is the recent case of *National Land and Investment Company v. Kohn.*22 Easttown Township, under pressure of population expansion from eastern Philadelphia suburbs enacted a four-acre minimum lot size, ostensibly to insure proper sewage disposal, protect against water pollution, and preserve the character of the neighborhood. Applying the due process standard,23 the Supreme Court of Pennsylvania held that the four-acre requirement was unconstitutional as applied. The court stated in dictum:

It is not difficult to envision the tremendous hardship as well as the chaotic conditions which would result if all the townships in this area decided to deny to a growing population sites for residential development within the means of at least a significant segment of the people.24

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23. The due process clause limits the exercise of the police power through zoning. It requires that a zoning ordinance bear a reasonable relation to the public health, safety, morals or general welfare. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). In this landmark case the Supreme Court, passing on a zoning ordinance which excluded industry from a Cleveland suburb, foreshadowed the possibility of an overriding metropolitan interest:

The village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit within the limits of the organic Law of its creation and the State and Federal Constitutions... It is not meant by this, however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.

24. 272 U.S. at 389-90.
25. 419 Pa. at 528, 215 A.2d at 610. Compare the statement of the New Jersey Superior Court, Law Division, in holding that a township zoning ordinance which restricted construction of residence in a strictly rural area upon a plot of less than five acres was not unreasonable per se:

The manifest design of modern judicial approach is to save a repetition of the blighting slums that are in many cases the by-product of living in highly industrialized communities with the resultant depreciation of surrounding property values and the creation of a source of infection of the body social.... To a lesser extent this condition persists in suburban communities on the periphery of these highly industrialized areas and the attempt has been to contain rather than permit an extension of
Another example of municipal parochialism with a potential detrimental metropolitan impact is seen in Borough of Cresskill v. Borough of Dumont\textsuperscript{25} where defendant borough, Dumont, amended its zoning ordinance to change a certain block from a residential zone to a business district. The block in question was bounded by three other boroughs, all of which joined several residents of each borough in initiating the complaint, charging that the amendatory ordinance was not in accordance with the comprehensive regional zoning plans of the neighboring boroughs. Specifically the amendment failed

to take into consideration the physical, economic, and social conditions prevailing throughout the entire area . . . and that regard was given solely to the political boundaries of . . . Dumont in utter disregard of the contiguous residential areas of the plaintiff's boroughs.\textsuperscript{26}

The lower court invalidated the ordinance, holding it was almost inevitable that an adjoining municipality would be affected by zoning regulations adopted along its border by a contiguous municipality.\textsuperscript{27} On appeal the Supreme Court of New Jersey affirmed but rejected the reasoning of the lower court and invalidated the ordinance on the grounds of spot zoning within the terms of the local ordinance. However, a statement by the court suggests that local units of general jurisdiction may have to look at the possible regional impact when considering zoning.\textsuperscript{28}

B. The Pancake Phenomenon

Despite patent interdependence of economic interests among metropolitan area residents inherent in the “spillover effect,” however, the present status of government in metropolitan areas is frequently disorganized, diffused, stagnant, and frustrating. To examine this phenomenon, a standard definition of what constitutes a metropolitan region is required. The most widely used definition is the “standard metropolitan statistical area” (SMSA) employed by the United States Bureau of the Census. According to this definition, “each SMSA contains at least one central city and adjacent counties that are found to be metro-

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\textsuperscript{26} Id. at 240, 104 A.2d at 442.


\textsuperscript{28} 15 N.J. at 247, 104 A.2d at 445-46.
politan in character and economically and socially integrated with the county of the central city." The central city must contain not less than 50,000 population, or if there are two contiguous cities which represent a community for social and economic purposes there must be a combined population of at least 50,000. SMSA's may cross state lines. The 1960 Census of Population showed nearly two-thirds of the population of the United States—113 million of 179 million people—residing in 212 SMSA's.

Clearly, however, the most material characteristic of metropolitan areas which can be dramatically illustrated by the use of statistics is the confusing and complex pattern of governmental units functioning in the area. The 1962 Census of Government found 91,186 local units of government in the United States. The average number per state was 1,825; Minnesota had the fourth highest number of local units with 5,213. Many SMSA's contain literally hundreds of governmental units whose territories often partially overlap. The Committee for Economic Development referred to Fridley, Minnesota, a city within the Minneapolis-St. Paul SMSA as a "believe it or not" situation because there were eleven overlapping layers of government. These contributed to the confusion and apathy of local voters who were expected to exercise informed control over these superimposed governments through the electoral franchise.

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30. Id.
31. United States Bureau of the Census, supra note 29, at 11. A more recent survey has disclosed an increase in the total number of SMSA's from 212 in 1960 to 231 in 1967. United States Bureau of the Budget, Standard Metropolitan Statistical Areas (1967). During the period from 1940 to 1960 the proportion of the total population living in SMSA's increased from fifty-five per cent to sixty-three per cent, ACIR, Alternative Approaches at 5. During the decade of the fifties, eighty-four per cent of the total population growth occurred in metropolitan areas. R. Martin, The Cities and the Federal System 14 (1965) [hereinafter cited as Cities].

The Secretary of Housing and Urban Development said:
This growth is the most portentious single fact of our time—always excepting the thermonuclear threat. It means, among other things, that in the next thirty-five or forty years we may have to build as much housing, industrial plants, and highways as we have built in our previous history [sic]. In the process, the amount of land consumed by urbanization will be doubled.

R. Weaver, Dilemmas of Urban America 3 (1965).

33. Committee for Economic Development, Modernizing Local
tional overlap in SMSA's such as in the case of Fridley has been compared to "a stack of pancakes in disarray." The disarray is a result of the lack of coincidence of the boundaries and jurisdiction of the various units, which usually cover only a portion of the same geographical area.

The impact of this "pancake" effect on the metropolitan environment is indisputable. Fragmented governmental units are expected to handle isolated problems such as physical blight in the cities, substandard housing, inadequate urban mass transportation, education, water and air pollution, and juvenile delinquency. These problems are all public in nature and impact, and depend primarily upon government action for solution. However, the Council of State Governments summed up the root of the metropolitan problem:

The basis of the problem is the absence of general local [area-wide] governmental organizations broad enough to cope with metropolitan matters. There is a lack of area-wide governmental jurisdictions that can effectively provide and finance services, that can plan and regulate and that are constructed to facilitate adequate accountability to the metropolitan public for their actions. The metropolitan problem thus is in fact a series of major problems.

Moreover, several other problems exist. First, the local units are not large enough in population, area or taxable resources. Second, popular control over local governments is ineffective because of the large number of elected offices and special districts, through which political responsibility is diffused. Third, policy making mechanisms are weak in most local units except


It should be noted that the Minnesota State Legislature in the 1967 Session created two more "layers of government" which exercise jurisdiction over Fridley: The Metropolitan Transit Commission, Minn. Stat. §§ 473.01-473.08 (1967) and the Metropolitan Council, Minn. Stat. § 473 B. 01 - 473 B. 08 (1967).

34. J. Bollens, supra note 9, at 151.
35. Id.
36. R. Martin, supra note 31, at 14-19. Other problems include traffic control, land use planning and control, disposal of sewage and solid waste, open space acquisition, and civil defense. ACIR, Alternative Approaches at 7. See also Governor's Commission on Metropolitan Problems, Meeting Metropolitan Problems 9 (Cal. 1960).
cities. There is seldom strong executive leadership formulating plans, subject to review by a representative legislative body. Fourth, the administrative organization in many local governments is antiquated. Fifth, many units of local government have failed to attract qualified personnel, due in part to the spoils system in some areas, and low pay scales in others. 38

From this milieu of dense population, fragmented overlapping, and governmental competition, the question necessarily arises, "[w]ho can speak for the metropolitan area and its people?" 39 Generally there has been no answer. One solution often suggested by commentators is the integration of various governmental units through reorganization of governments in metropolitan areas. 40

III. THE ROLE OF THE STATE AND FEDERAL GOVERNMENTS

A. The States

Under the tenth amendment to the Constitution, the states have the authority to regulate local government organization and power. 41 Each local government possesses only that authority granted by state constitutions and statutory action. The Dillon Rule, 42 expounded in 1868, holds that unless otherwise provided in state constitutions, municipal corporations are solely creatures of the state. However, the Dillon Rule is often limited by constitutional home rule provisions 43 and prohibitions against special or local legislation. 44 Given these impediments to state

38. COMMITTEE FOR ECONOMIC DEVELOPMENT, supra note 33, at 11-13.
40. E.g., ACIR, ALTERNATIVE APPROACHES; COMMITTEE FOR ECONOMIC DEVELOPMENT, supra note 33; DIXON, NEW CONSTITUTIONAL FORMS FOR METROPOLIS: REAPPORTIONED COUNTY BOARDS; LOCAL COUNCILS OF GOVERNMENT, 30 LAW & CONTEMP. PROB. 57 (1965); GRANT, TRENDS IN URBAN GOVERNMENT AND ADMINISTRATION, 30 LAW & CONTEMP. PROB. 38 (1965).
41. U.S. CONST. amend. X: The powers not delegated to the United States by The Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
44. In 1962 all but four states had constitutional provisions governing special legislation or requiring that all such legislation be general. Winter, CLASSIFICATION OF MUNICIPALITIES, 57 NW. U.L. REV. 279, 280 (1963). See, e.g., Minn. Const. art. 11, § 2; MINN. STAT. § 645.023 (1967).
action, it is clear that responsibility for change has rested in part with the voters.\textsuperscript{45}

In addition to the state authority over local governments even in lieu of the obstacles mentioned above, there are several reasons why the states will, and should act to help solve the metropolitan problem. Hopefully, states will act more responsively to metropolitan crises as their legislative bodies become apportioned on the one-man-one-vote basis under \textit{Baker v. Carr}.\textsuperscript{46} Not only will urban areas look to the states for aid, but the shift in representation will result in more state attention being given to the metropolitan areas.\textsuperscript{47} A chief reason why the states should act in the metropolitan area is that in most instances the states' geographical jurisdiction is broad enough to cope with metropolitan problems.\textsuperscript{48} Finally, the states have a broad economic and tax base and can, through the use of aid programs, bring its resources to bear on local needs.\textsuperscript{49} Despite these advantages enjoyed by the state governments, they have been slow to respond with needed technical and expert assistance in the area of finance and planning.\textsuperscript{50} However, it has been recognized that the states play a key role in the solution of metropolitan area problems. The Council of State Governments stated that

\hspace{1em} responsibility for providing a workable pattern of local government in metropolitan areas, with variations as circumstances require, is clearly a state responsibility, all the more so because the present complex pattern is its handiwork.\textsuperscript{51}

It is generally concluded that the primary responsibility of the states is to provide a governmental framework for attacking metropolitan problems and the technical assistance necessary to implement solutions.\textsuperscript{52} Both responsibilities, however, have been honored in the breach. The states have generally failed to provide legal authorization for even the mildest reforms, or when they have responded to metropolitan area problems it has been with too little, too late.\textsuperscript{53}

\begin{itemize}
\item \textsuperscript{45} J. Bollen\textsuperscript{s}, \textit{ supra} note 9, at 529.
\item \textsuperscript{46} 369 U.S. 186 (1962).
\item \textsuperscript{47} Beckman & Ingraham, \textit{The States and Urban Problems}, 30 \textit{LAW & CONTEMP. PROB.} 76, 78 (1965).
\item \textsuperscript{48} \textit{Council of State Governments, State Responsibility in Urban Regional Development} 18 (1962).
\item \textsuperscript{49} B. Frieden, \textit{ supra} note 9, at 118.
\item \textsuperscript{50} J. Bollen\textsuperscript{s}, \textit{ supra} note 9, at 529.
\item \textsuperscript{51} \textit{Council of State Governments, supra} note 48, at 17.
\item \textsuperscript{52} Id.; ACIR, \textit{Government Structure} at 19.
\item \textsuperscript{53} J. Bollem, \textit{ supra} note 9, at 529. R. C. Martin wrote: “The states have been loath to grapple with urban problems, particularly the vast and complex problems of a volatile metro-society.” R. Martin,
B. The Federal Government

Ever since the depression, the federal government has played an increasingly large role in matters which have traditionally been of local concern. There are two reasons assigned for this new role. A primary reason for federal government action in metropolitan areas has been the failure of states to meet the problems, as discussed above. Second, the sheer magnitude and complexity of the problems has led to the conclusion that while metropolitan problems are of local origin, they are national in both scope and significance. The response of the federal government has been a cash grant-in-aid program. However, while the amount of funds flowing to the cities has increased, a marked concern has been shown in Washington that the grants are ineffectual because of poor coordination and that direct national-local grants tend to disrupt the federal system balance among local governments, the states, and the national government.

Recently the federal government has attempted to pursue a


55. R. Connery & R. Leach, The Federal Government and Metropolitan Areas 199-209 (1960). The argument has been advanced that the pattern of direct national-local relations in some areas has prevented the states from exercising their role in the federal system. ACIR, Government Structure at 43. Cf. The statement of Arthur Naftalin, Mayor of Minneapolis in 1962:

When we turn to the State—and this is true generally over the country—we find that the states have not been in a position to be of much help, at least they have not exercised leadership in the assistance of municipalities. . . . It is also a question of inadequate procedure, inadequate structure and inadequate use of the legislative process, together with a lack of concern and an archaic political and governmental device.

Hearings on the Role of the Federal Government in Metropolitan Areas Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 87th Cong., 2d Sess. 43 (1962).

56. R. Martin, Cities at 172.

57. The amount of federal aid to state and local governments has increased dramatically from 7.9 billion dollars in 1962 to an estimated 17.4 billion dollars in 1968. U.S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 420 (1967).

policy of "creative federalism."\textsuperscript{59} The goal of the policy is to preserve and strengthen state and local government while coordinating all governmental projects aimed at urban problems.\textsuperscript{60} The most recent and by far the most significant legislation illustrating this policy is the Demonstration Cities and Metropolitan Development Act of 1966.\textsuperscript{61} Under this program, applications by local governmental units within metropolitan areas for federal funds are required to be reviewed by an area-wide planning agency for its comments on the extent to which the local project is consistent with comprehensive metropolitan planning.\textsuperscript{62} Loans or grants for facilities which require coordination include open space,\textsuperscript{63} hospitals,\textsuperscript{64} airports,\textsuperscript{65} libraries,\textsuperscript{66} water supply and distribution,\textsuperscript{67} sewerage facilities and waste treatment,\textsuperscript{68} highways,\textsuperscript{69} mass transit,\textsuperscript{70} water development and land conservation,\textsuperscript{71} and various other miscellaneous programs.\textsuperscript{72} Supplement-


\textsuperscript{60} 1966 Hearings at 270.


tal incentive grants are available to areas meeting federal standards for area-wide planning and coordination. In addition to coordination among units within the metropolitan area, the act also provides for a metropolitan "expediter" to coordinate the needs of metropolitan area governments with the federal programs available. The policy, therefore, of creative federalism evidenced by the Demonstration Cities Program, represents recognition of the need to match problems of national scope with human and economic resources from the national government.

IV. CURRENT PROPOSALS TO SOLVE THE METROPOLITAN PROBLEM

A. UNDERLYING VALUES TO BE SERVED

Students of political theory have suggested that four primary values must be served by any form of governmental reorganization: liberty, equality, welfare, and efficient operation in rendering governmental services. In this century, the first three have been subordinated to the fourth. In addition to

74. Id. § 3333.
75. R. Martin, Cities at 172.
76. Ylvisaker, Some Criteria for a "Proper" Areal Division of Governmental Powers, in Area and Power 27 (A. Maass ed. 1959). The author views the implementation of these values in a political system as giving assurance of protection to individuals against arbitrary or hasty government action. Thus, liberty is reflected in the system through the provision of points of popular access, pressure, and control; and by providing access to governmental power by minorities. Equality is realized to the extent the system affords a barrier to concentration of social, economic, and political power. Equality is maximized in a positive sense through provision of opportunities for participation in the development of both individual and public policy. The value of welfare is reflected to the extent the system assures that the needs of individuals will be recognized and met. Id. at 30-34.
78. Id.
these values, the traditional ideological controversy between localism and centralism\textsuperscript{79} is ever present in any political struggle to reorganize metropolitan government.\textsuperscript{80} These issues manifest themselves in disputes regarding the degree to which local autonomy shall be surrendered to regional determination, and the extent of local control to be sacrificed to a larger, and perhaps more efficient governmental unit.

Several sets of criteria have been suggested for use in evaluating local government structure and reorganization.\textsuperscript{81} The Advisory Commission on Intergovernmental Relations suggests the following eight.\textsuperscript{82} (1) The jurisdiction of the local government should be broad enough to “cope adequately” with the forces creating metropolitan problems. Coping adequately is explained to mean effective planning throughout the entire area, effective decision making designed to foster debate among a full range of diverse interest groups or factions, and effective execution of public decisions. (2) The base of local government should be broad enough to be able to raise adequate revenue in an equitable manner. (3) There should be flexibility to alter boundaries to adjust to future growth. (4) Local governments should be general-purpose “rather than single-purpose” to ensure a better balancing between needs and resources, and to coordinate governmental service functions efficiently.\textsuperscript{83} (5) The


\textsuperscript{80} Government reorganization in metropolitan areas may meet with the opposition of those people whose vested interests or positions would be in jeopardy if a new scheme were adopted. Moak, Some Practical Obstacles in Modifying Governmental Structure to Meet Metropolitan Problems, 105 U. Pa. L. Rev. 603, 612-13 (1957). One political observer noted:

There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things. Because the innovator has for enemies all those who have done well under the old conditions, and lukewarm defenders who may do well under the new.


\textsuperscript{81} ACIR, Alternative Approaches at 11-17: Jones, Attempts to Meet The Problems, in The Future of Cities and Urban Development 527-29 (C. Woodbury, ed. 1953); Ylvisaker, supra note 76, at 34-41.

\textsuperscript{82} ACIR, Alternative Approaches at 11-17.

\textsuperscript{83} Ylvisaker, supra note 76, at 35-36 states that he does not mean by the assignment of general power to exclude special districts or
jurisdiction should be broad enough to allow the unit to take advantage of the "economies of scale," that is, the relationship of efficiency between the size of a government unit and its costs of providing services and performing functions. (6) The local unit should be "accessible to, and controllable by the people." This criterion relates to the structural and procedural aspects of the unit such as the number of elected officials, the method of their selection, and provisions for receiving and acting on complaints. (7) The local government should foster active citizen participation. (8) The final criterion suggested by the Commission is political feasibility. This involves the potential for acceptance which any proposal has. It depends on factors such as the disposition of the present local governments toward change, the attitude of persons with authority to act (the state legislature or electorate), and the status of the constitutional or statutory authority with regard to change.

B. CURRENT APPROACHES

Modification of governmental structure in metropolitan areas as a means of adapting to the needs and pressures of urbanization has received wide attention by scholars. Many employ different schemes of classification yet most employ similar basic concepts. The following classification, with one exception, is the system used by the Advisory Commission on Intergovernmental Relations. It proceeds according to the impact which the approach has on existing government structure, from

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85. Ylvisaker, supra note 76, at 39 states as his fourth criteria: "The components should not as such be represented in the legislatures of the higher levels." This maxim has particular significance for the organization of a metropolitan area government. In both the council of governments approach and the federation approach, stymie and parochialism are likely to impede the success of the metropolitan arrangement, since representatives at the metropolitan level represent their governments instead of constituencies apportioned according to population.
86. See, e.g., C. Adrian, GOVERNING URBAN AMERICA 276 (1961); Jones, Local Government Organization In Metropolitan Areas, in THE FUTURE OF THE CITIES AND URBAN DEVELOPMENT (C. Woodbury, ed. 1953); COUNCIL OF STATE GOVERNMENTS, THE STATES AND THE METROPOLITAN PROBLEM (1956).
mildest to strongest. An addition is the initial inclusion of a metropolitan planning agency, which in some cases may have only an informal effect in creating a metropolitan area-wide outlook.

1. Regional Planning Commissions

These commissions are usually composed of a professional staff and controlled by public officials. They are charged with creating "comprehensive master plans" and coordinating local efforts towards solution of metropolitan problems. Powerless and frequently not inclusive of all affected jurisdictions within the metropolitan areas, the only positive achievement of such bodies has usually been the creation of some sense of metropolitan-mindedness.

2. Extraterritorial Powers

Here, municipalities are given powers beyond their boundaries to provide services for their citizens, and in some cases, to regulate the unincorporated fringe area beyond the boundary through zoning and subdivision control.

3. Intergovernmental Agreements: Joint Exercise of Powers and Intergovernmental Sales of Services

These agreements may be authorized by special or general law. They may provide for sharing of the costs of a function, or one local unit may provide it for another.

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89. Haar, Regionalism and Realism in Land Use Planning, 105 U. Pa. L. REV. 515 (1957); Note, supra note 88, at 597.

90. See R. Maddox, EXTRATERRITORIAL POWERS OF MUNICIPALITIES IN THE UNITED STATES (1955); F. Sengstock, EXTRATERRITORIAL POWERS IN THE METROPOLITAN AREA (1962); Anderson, The Extraterritorial Power of Cities, 10 MINN. L. REV. 475 (1926).


92. E.g., MINN. STAT. § 471.59 (1967).

93. See notes 134–36 infra, and accompanying text for a discussion of the Joint Powers program in Minnesota.

94. An extreme example is Lakewood, California, which upon becoming a city contracted to have almost all governmental services provided by Los Angeles County. See S. Gove, The Lakewood Plan (1961).
4. **Voluntary Metropolitan Councils**

These are voluntary associations of elected public officials of governments in the metropolitan area, often referred to as the "council of government" approach, and are discussed below.95

5. **The Urban County**

This involves a reorganization in which a county shifts from its traditional position as an administrative arm of the state to a position of providing a significant number of services of a traditionally municipal character throughout the entire jurisdiction.96

6. **Transfer of Functions to the State Government**

This generally involves performance of functions which extend beyond the boundaries of the metropolitan area by an executive agency of the state.97

7. **Metropolitan Special Districts, Limited Purpose and Multiple Purpose**

Special districts are independent units of government organized to perform one (limited) or more (multiple) services in the urban area.98

8. **Annexation and Consolidation**

The former generally refers to absorption of territory by a city, with the structure of government unchanged. The latter, however, generally refers to the merger of two units of government to form a new unit.99

95. See note 106 infra, and accompanying text.
98. ACIR, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT (1964); J. Bollens, Special District Governments in the United States (1957); M. Pock, Independent Special Districts: A Solution to the Metropolitan Area Problems (1962); R. Smith, Public Authorities, Special Districts and Local Government (1964).
99. See F. SENGSTOCK, ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS (1968); F. SENGSTOCK, CONSOLIDATION: BUILDING A BRIDGE BETWEEN CITY AND SUBURBS (1964). See also, R. DIXON,
9. **City-County Separation**

This approach is an action whereby a central city separates from the county and then exercises both municipal and county functions within its boundaries.\(^\text{100}\)

10. **City-County Consolidation**

This represents the complete or partial merger of a county and cities within it into a single government.\(^\text{101}\)

11. **Federation**

This involves the division of functions between two levels or tiers of government according to whether they are local or area-wide.\(^\text{102}\)

The schemes most frequently used to solve functional problems in the metropolitan area include intergovernmental service agreements and special districts. Annexation and consolidation have widespread use for reorganization of general purpose units. However, it should be noted that these approaches to government reorganization are not mutually exclusive; some are supportive of others. In addition, they do not envision an elaborate shift to a new supergovernment while jettisoning the old structures. From the point of view of political feasibility this seems necessary. Yet at least one commentator feels there is a compelling need to "constitutionalize" metropolitan government so that the metropolitan citizen can "acquire a direct voter relationship between himself and a set of officials performing at least a goodly number of metropolitan functions."\(^\text{103}\)

The most widely accepted approach in recent years has been the council of government system.\(^\text{104}\) These councils are largely

\(^\text{100. P. Studenski, The Government of Metropolitan Areas in the United States 170 (1930).}\)

\(^\text{101. Council of State Governments, The States and the Metropolitan Problem 53 (1956).}\)

\(^\text{102. See P. Studenski, supra note 100, at 386; J. Bollens, supra note 96, at 439; Grumm, Metropolitan Area Government: The Toronto Experience (1959); H. Kaplan, Urban Political Systems (1967).}\)

\(^\text{103. Dixon, New Constitutional Forms for Metropolis: Reapportioned County Boards; Local Councils of Governments, 30 Law & Contemp. Probs. 57, 64 (1965).}\)

composed of elected officials in the metropolitan area, and are therefore built upon the existing political structures. Since they are entirely voluntary, they are not dependent upon special legislation or voter approval. They may, however, have legal status under joint powers legislation.\textsuperscript{105}

Councils have proven to be a social and political forum where local officials can meet together on common concerns. The resulting amelioration of interlocal suspicions and hostilities has been said to be one of the most significant achievements of this approach.\textsuperscript{106} Two devices utilized to encourage communication include, first, the institutionalized practice of receiving and hearing reports from other regional agencies such as planning commissions or study groups. However, debate or action seldom follows these hearings and the process remains essentially a communications device. A second device used by the councils is the establishment of standing committees on functional problems. Often this may lead to the provision of cooperative services to council members. Such services include data collection, joint studies, police information, and joint purchasing.\textsuperscript{107}

Councils of governments are not without problems associated with fragmented government in metropolitan areas. Many problems stem from the youth of this type of approach, while others are inherent in the structure and nature of the organization. A paramount difficulty with the council of government approach is the method of representation. Since each unit has equal representation, those units representing more populous areas, such as the central cities, are reluctant to see the council develop into an effective force in regional affairs.\textsuperscript{108} Secondly, representation is a problem on the executive committees, which are in most cases the groups which conduct the business of the council. Where both the central city and counties are represented on the executive committee, competition may develop

\textsuperscript{105} E.g., CAL. GOV'T CODE §§ 6500-6513, as amended, (1963).
\textsuperscript{106} Id. at 8.
\textsuperscript{107} Id. at 14.
among jurisdictions within a county for municipal representation on the committee. A third problem arises out of the fact that the council is composed of elected officials of constituent governments. While this is a strength of the organization in terms of promoting interlocal cooperation, it becomes a weakness if effective council members are defeated in local elections on local rather than metropolitan issues.

The size and organization of the councils also limits their effectiveness. Because they attempt to encompass all governmental units in the area, the council may have as many as ninety governments represented. Consequently the entire membership meets infrequently—usually once or twice a year. The division of the group into special committees further reduces the exposure of the officials to common problems and solutions. Moreover, this arrangement tends to result in low political and public visibility, rather than wide publicity of area-wide problems and proposals. Finally, the tacit or formal requirements for consensus, or unity in voting magnifies the power of local interests. Thus, the recalcitrance of one unit may cause a delay past the critical moment for decision, or block a decision altogether.

The councils themselves often impose strict limitations on the types of projects with which they deal. One recent study made the following four conclusions. First, the councils are more likely to be successful when the participating governments agree on both the scope and definition of the problem, and it tends to be noncontroversial. Second, the solution should not impair the reputation of any member government. Third, the prospects for success are greater when the solution is self-executing, requiring no positive action on the part of member governments for implementation. Finally, any proposed action is more likely to meet with the council favor if it costs member units little or nothing.

It should be remembered, however, that this form of cooperation is relatively new. While they suffer from many inade-

109. Id. at 18.
110. Dixon, supra note 103, at 70.
111. E.g., The Association of Bay Area Governments in the San Francisco Area has eighty-six members; the Southern California Association of Governments in the Los Angeles Area has ninety. R. Hanson, supra note 104, at 17.
112. Id. at 34.
113. ACIR, ALTERNATIVE APPROACHES at 38.
114. R. Hanson, supra note 104, at 14.
quacies, their gains have been significant. With increasingly large amounts of federal grants flowing to and through councils of governments to metropolitan areas, their status and stability will become established. The most recent survey of councils of governments concluded:

They have proved their worth, and offer much knowledge from which other areas may benefit. The future of this form of metropolitan cooperation and action seems bright. The councils of governments offer one of the most productive means of translating plans into action for many of America's metropolitan areas.¹¹⁶

V. THE MINNESOTA METROPOLITAN COUNCIL

A. BACKGROUND

In Minnesota the central cities of Minneapolis and St. Paul plus a five-county suburban area constitute a Bureau of the Census SMSA which includes at least 261 government units,¹¹⁷ a present population of 1.7 million, a projected population by 1980 of 2.5 million,¹¹⁸ and a land area in which urban development is expected to triple to over 900 square miles by the end of this century.¹¹⁹ The central cities are losing people and commercial and industrial firms to the suburbs.

Recent studies by the Citizen's League of Minneapolis and Hennepin County revealed major problems with sewage disposal, mass transit facilities, multiple governmental units with inadequate financial resources, large areas with declining housing in need of rehabilitation, inequalities in assessing valuation of property within and among municipalities, deficiencies in fire defense, police protection, traffic congestion, inadequate provisions for preservation of open spaces and for public parks and playgrounds, and chaotic zoning and planning, with intense competition for industry.¹²⁰ An additional series of problems in-

¹¹⁶. R. Hanson, supra note 104, at 34-35. See Jones, supra note 104, at 308: "I view voluntary metropolitan associations of local governments, however, as the most promising development in our Federal system. . . ."


¹¹⁸. Joint Program For Land-Use Transportation Planning In The Twin Cities Metropolitan Area, Report Number Two: 4,000,000 By 2,000,000 (1964).

¹¹⁹. Id. at 5.

cludes highway planning in the metropolitan area, airport planning, mosquito control, and air pollution. The Twin Cities metropolitan area therefore has been confronted with the characteristic problems of metropolitan areas generally: the spillover effect resulting from policies of "municipal mercantilism" which often ignore the interests of the entire region; the pancake phenomenon of fragmented and overlapping layers of government; and the lack of adequate governmental machinery to deal with area-wide service problems.

As early as 1925 attempts at an area-wide approach to these problems were undertaken. In 1933 and 1943 respectively the Minnesota Legislature created two special service districts which are still operational: a sanitary district and an airport commission. In 1957 the legislature established a Metropolitan Planning Commission, the immediate predecessor of the new Metropolitan Council. One of the significant features of the Planning Commission statute was the provision for an area-wide tax levy so that the commission might support itself. While the original jurisdiction of the commission was the five counties contiguous to the Twin Cities area, by 1959 Carver and Scott Counties had joined, making the area included the same as that included in the planning effort 30 years earlier, and ultimately in the present Metropolitan Council.

The Metropolitan Planning Commission was charged with responsibility in four areas. It was to (1) plan for the physical, social, and economic development of the metropolitan area; (2) conduct research; (3) advise and assist the legislature and constituent units on planning matters; and (4) act as a coordinating agency for activities effecting metropolitan area planning. Significantly, the agency was purely advisory. It was given

122. R. Martin, supra note 115.
124. Id. §§ 360.101-360.144.
125. Id. §§ 473.01-473.11.
126. Id. § 473.08.
128. Minn. Stat. § 473.05 (1967).
129. Before a governmental unit in the Metropolitan area makes a final decision on any matter which, in the sole discretion of its governing body, is not predominantly local but has a substantial effect on regional development, the tentative proposal or plans shall be presented to the commission for its recommendation, and the governing body shall take no binding action
no formal sanctions by which to implement its plans; implementation of recommendations to local units depended upon the voluntary acceptance by the participating governmental units. There is little evidence that before 1965 the Commission had gained any amount of "political acceptance" by the constituent units, and there is no record that any government unit submitted any project having a "substantial effect on regional development" for the Commission's recommendation as authorized by law. As a result, a large portion of the time and talents of staff and Commission members was spent in intergovernmental and educational activities. In 1961 the Commission organized the Community Affairs Division which served as a liason to the public and the legislature in matters of metropolitan interest. It was in the capacity of research, planning, and community relations that the Commission made the most positive impact.

One other metropolitan area-wide approach to current and anticipated problems is evidenced by the "Joint Program." The Joint Program was an intergovernmental cooperative effort which was formed as a response to the 1962 amendment to the highway act. This amendment imposed, as a condition to receiving certain highway aid, the requirement that any project be consistent with a "comprehensive transportation planning process carried on cooperatively by State and local communities." Also, it was financed in part under the Urban Planning Assistance Pro-

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130. R. Martin, supra note 115, at 61. See also the Annual Reports of Metropolitan Planning Commission.

131. It should be noted, however, that the Metropolitan Planning Commission held public hearings and submitted recommendations on four disputes between area municipalities and the Minnesota Highway Department concerning interstate freeway design. Twin Cities Metropolitan Planning Commission, 1965-1966 Biennial Report to the Minnesota Legislature 10 (1966).


133. R. Martin, supra note 115, at 61. The Commission published a number of detailed studies on Metropolitan area-wide problems: Guide to Subdivision Control (1960); Metropolitan Land Study (1960); Metropolitan Water Study (1960); Metropolitan Economic Study (1960); Metropolitan Population Study (1961); Street and Highway Standards (1961); Metropolitan Parks (1961); Shopping Facilities in the TCMA (1964); County Planning Guide (1965).

The Joint Program included local representatives of the Minnesota Highway Department, the Metropolitan Planning Commission, the engineering and planning departments of Minneapolis and St. Paul, and the highway departments in the seven county area. The basic objective of the Program was to encourage development decisions that will enhance the "livability" and "efficiency" of the metropolitan environment. The basic product of the Program was a "Comprehensive Metropolitan Plan . . . which will integrate transportation systems and the urban activities they serve."136

B. ORIGIN OF THE METROPOLITAN COUNCIL

Initial backers of a more powerful metropolitan-wide unit of government were stimulated by two forces. First, the Metropolitan Planning Commission was becoming the conduit in the area through which applications for several federal aid programs had to be referred. The volume of federal applications promised to increase greatly after Congress passed the Demonstration Cities and Metropolitan Development Program.137 It was believed by some that the Metropolitan Planning Commission was not intended to make policy on this level, but was rather intended to be a purely advisory planning body.138 A second force was the widespread belief that the existing fragmented structure of government in the metropolitan area was incapable of handling service problems which extended across jurisdictional boundaries.139 Similarly, there was expressed a need to coordinate the operations and development of existing special service districts within the area. Thus, the Metropolitan Council was created, replacing the Metropolitan Planning Commission, in "order to coordinate the planning and development of the metropolitan area."140

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135. 40 U.S.C. § 461 (g), as amended, (Supp. II, 1967) provides up to two-thirds of the estimated cost of studies, plans and programs undertaken in seeking a solution to regional problems.
136. JOINT PROGRAM FOR LAND USE—TRANSPORTATION PLANNING IN THE TWIN CITIES METROPOLITAN AREA, MEETING THE CHALLENGE OF METROPOLITAN GROWTH, REPORT NUMBER ONE at i (1963). The plan has recently been completed. It poses the question to the Metropolitan Council, also charged with preparing a development guide, how much of the Joint Program Plan should be accepted?
138. CITIZENS LEAGUE, SUMMARY OF CONTENTS AND PROPOSALS ON AREA WIDE GOVERNMENTAL PROBLEMS OF THE TWIN CITIES METROPOLITAN AREA 10 (1966); CITIZENS LEAGUE, REPORT; A METROPOLITAN COUNCIL FOR THE TWIN CITIES AREA (1967).
139. See CITIZENS LEAGUE, supra note 121.
140. MINN. STAT. § 473B.01 (1967).
The Council was established by two statutes. The first enacted the escape clause in the state constitutional amendment prohibiting special laws without the consent of the affected localities,141 and the second established the council.142 Consequently the issue did not involve a general referendum in the Twin Cities area, but circumvented the problem of voter approval which has proven fatal to plans for reorganization in other areas.143 In this context it is interesting to consider the Council in regard to the ideological dilemma of localism versus centralism. If it may be inferred from the fact that various groups representing municipalities in the Twin Cities area favored an elected operating council144 and that most of the municipalities themselves favored the same, then it appears that it was the state government and not local units that feared a “supergovernment.” Similarly, the Council is oriented toward and responsible to the legislature, not local voters, and is therefore a more centralized unit than some advocates originally envisioned.145

141. Article 11, § 2 of the Minnesota Constitution provides:
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 governing body and by such majority as the legislature may direct (emphasis added).

The 1967 Legislature enacted by general law the escape clause contained in the Constitution. MINN. STAT. § 645.023 (1967).

142. MINN. STAT. §§ 473.01-.07 (1967).

143. See ACIR, FACTORS AFFECTING VOTER REACTION TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS (1963).


145. Minnesota does not publish bills which fail to reach the second reading. The following account is produced from newspaper accounts and the Citizens League file of typewritten bills. There were two basic bills introduced. The Ogdahl-Frenzel Bill (Senate File Number 500) envisioned an elected, operating council with comprehensive affirmative powers and a plan by which special districts would be added to the jurisdiction of the Council one at a time.

The Rosenmier, Newcome, Ashback Bill (House File Number 1508), which was adopted after several amendments, entailed a non-operating appointed body to coordinate long range plans in the metropolitan area. The council was to be essentially an “arm of the state government” and not a “supergovernment.” Mpls. Tribune, February 24, 1967, at 9, col. 6-7.

It is significant to note that both proposals contemplated merging the Twin Cities Metropolitan Planning Commission with the new unit. The Commission itself urged this result in the event the legislature acted to create a new agency. However, if the legislature did not act, the Commission proposed a reduction of its own membership from thirty to fifteen members, in order to strengthen its operations. Twin
C. STRUCTURE AND ORGANIZATION OF THE METROPOLITAN COUNCIL

The Metropolitan Council exercises jurisdiction over the seven county area immediately surrounding the Twin Cities area. It is composed of fifteen members appointed by the governor. Council districts were created by combining state senatorial districts, which are apportioned by population. The governor is to consult with all members of the legislature from the area composing the council district from which the member is to be appointed. Furthermore, the appointments are subject to the advice and consent of the state senate. Each council member is to be a resident of the council district which he represents.

1. The Representation Scheme

Although the Council is appointed, it is apportioned on the basis of population, rather than according to the principle of constituent-unit representation where governmental units, not people, are represented in a larger decision making body. For example, the principle of constituent-unit representation is used in the federated metropolitan government approach, and in the councils of local governments approach. Similarly, the principle is followed with metropolitan special purpose districts primarily to avoid overburdening the electorate with lengthy ballots, and secondly, to link the districts to the cities and counties they over-


The Citizens League advocated a 29-31 member council with each council member representing a state senatorial district within the metropolitan area. Citizens League, Report, supra note 121, at 8. The Ogdahl proposal also followed this approach.

146. Mnnn. Stat. § 473B.02(3) (1967). The issue of whether the council members should be elected or appointed was fiercely debated. The Metropolitan Planning Commission, the Citizens League, the Hennepin and Ramsey County League of Municipalities, and the Metropolitan Section of the League of Municipalities all favored the Ogdahl proposal of an area-wide, multi-purpose directly elected council to operate in certain areas such as mass transit, sewage, and planning. Mpls. Tribune, February 17, 1967 at 24, col. 8. An amendment to the Rosenmier Bill was proposed in the Senate which would have made the Metropolitan Council elective in 1971. The amendment failed in a 33-33 vote. Mpls. Tribune, May 20, 1967, at 1, cols. 1-2. A similar amendment failed in the House by a vote 66-62. Mpls. Tribune, May 16, 1967 at 1, cols. 5-8.

147. Mnnn. Stat. § 473B.02 (1967). The original Rosenmier proposal provided for council members to be appointed at large from the metropolitan area, whereas the Ogdahl bill provided for state senatorial districts as the areal basis for representation.
The obvious problems which arise from representation by government-unit concern the population differences among the different units represented. In a council of governments, for example, a vote by the mayor of a lightly populated suburb may be equal to the vote of the mayor of the central city. A second problem arises from the parochialism which results from local officials on one tier of decision making representing that unit in another tier. Since the official is elected by the city, for example, he would be unlikely to register a vote adverse to the city's interest.

The Minnesota scheme in providing representation on a basis apportioned according to population, rather than by representation of local government units, enables the Council to reflect metropolitan interests better. Decisions by council members are likely to be unfettered by any dampening effect which the decision might have on a unit of government within their constituency. In addition, citizens of each district are provided with a more accessible structure through which to influence area-wide decisions. A disgruntled citizen need only contact one representative to voice an opinion, instead of facing the gamut of multiple overlapping jurisdictions.

While this scheme of representation may facilitate access to decision making, the method of selection affords far less citizen control than under a council of governments approach. For example, a disapproving citizen under an area-wide council of governments may express disapproval at the polls in local elections. However, a resident of the Twin Cities area may only exert indirect pressure on the Council. His control is only operative through his state representative, state senator, and the governor. In effect, political accountability is centered in the state government, not at the regional level.

The statutory scheme fails to accomplish certain gains possible under the council of governments approach. For example, since council members are not locally elected officials,
there may not be the desirable increase of intergovernmental communication and understanding. Indeed, the present system may tend to foster conflict between local governments and the council. The answer to this argument depends on future actions of the council and the extent to which it is able to coordinate local policies. Similarly, it may be argued that council members under the present scheme will not be closely linked to the existing local political power structure, as locally elected officials would be. That council members may not have a broad local political base may prove advantageous when faced with a decision which may be politically distasteful to governments in their respective districts. Thus, while the present form of representation may sacrifice intergovernmental good will, and does not provide for a broad base of local political power, it allows council members greater freedom and independence to represent metropolitan interests.

2. Improving the Method of Council Member Selection

Several arguments may be advanced favoring an appointive council as presently authorized, rather than elective council, particularly in the early years of its existence. They are based on the premise that the council is primarily a coordinating administrative body, not a policy making body with operating powers over a number of area-wide functions. First, there is an expressed need for capable men on the Council. Business leaders, it is argued, would accept the appointment of the governor but would not seek the office if positions were elective. Second, the appointment process is intended to preserve control of the Metropolitan Council in the legislature. The alternative, it is feared, is that the Council may eclipse the legislature in status and stature within the state. Third, there is a concern that if the Council were made initially elective, the decision would be irrevocable. This is based on the legitimate observation that governments, once established, develop inertia as well as vested interests and consequently are adverse to change. A final argument in favor of appointed officials in the early life of the Council is that it represents a new organization, and from the point of view of practical politics, should evolve slowly and carefully, removed from the political arena.

There are two strong arguments in favor of an elected coun-

152. See note 80, supra.
cil, however. The classic criticisms of special districts is that they lack political responsiveness to citizens\textsuperscript{153} and remain as hidden layers of government.\textsuperscript{154} Thus, an appointed board only adds to the voter confusion produced by fragmented government, whereas an elected council with wide publicity would have much greater public visibility. Similarly, an elected council over which the citizenry exercised control would be more politically responsive than an appointive body. Finally, if the Council were charged with the operation of specified metropolitan service districts, instead of allowing these agencies to remain accountable only to the legislature, voter confusion would be diminished. Given the youth of the Council, appointment rather than election of members appears to be a wiser choice for the first two years of existence. For the future, however, note the evaluation and proposals which follow.\textsuperscript{155}

D. Functions and Powers of the Metropolitan Council

The Metropolitan Council was not granted operating control over independent agencies in the area.\textsuperscript{156} It therefore does not reduce the pancake problem of fragmented and partially overlapping government units. To the extent that these special service districts fail to include the entire metropolitan area, tax, service, and economic disparities continue to exist. The Council, however, represents a significant approach to deal with problems associated with the spillover effect. Future development by independent special service districts will be coordinated by the council. Municipalities will be deterred from policies of municipal mercantilism, and local planning which has an impact on the metropolitan area will be regulated. The ability to achieve this goal stems from the Council's key power to plan for development in the area, and to review the plans of independent agencies and municipalities.

\textsuperscript{153} ACIR, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT 67-70 (1964).

\textsuperscript{154} One commentator referred to special districts as the "new dark continent of American politics." J. Bollens, SPECIAL DISTRICT GOVERNMENT IN THE UNITED STATES 1 (1957).

\textsuperscript{155} See notes 185-89 infra, and accompanying text.

\textsuperscript{156} The Ogdahl Bill provided that the new metropolitan unit would be a "Metropolitan Service Council" and would assume responsibilities in the area of planning, mosquito control, sewage, and mass transit through merger with the existing special districts handling each function.
1. Planning in the Metropolitan Area

The Council is charged by the legislature with preparation of a new comprehensive development guide for the metropolitan area. The guide is to contain "policy statements, goals, standards, programs, and maps prescribing guides for an orderly and economic development, public and private, of the metropolitan area . . . and shall recognize and encompass the physical, social, or economic needs of the metropolitan area . . . ." \(^{157}\)

It is significant to note that the method of preparation of the guide outlined by the statutory language includes public hearings. \(^{158}\) The Council is equipped to prepare the guide by virtue of the transfer to it of the powers and duties of the Metropolitan Planning Commission. \(^{159}\)

2. Council Review of Plans of Independent Commissions, Boards and Agencies

In the case of special agencies the Council is to review all long term operational and development plans which have "an area-wide effect, a multi-community effect, or . . . a substantial effect on metropolitan development." \(^{160}\) Provision is made for the Council to appoint one of its members to serve with each of the metropolitan special districts. \(^{161}\) Consequently the Council is afforded access to the plans of the agencies. If the referral committee of the Council finds a project is inconsistent with the development guide, it may direct that the operation be suspended indefinitely. The affected agency may then appeal the finding to the entire membership of the Council for a public hearing. If the Council and the agency are then unable to agree, the matter shall be presented at the next regular session of the legislature. \(^{162}\)

The Council's sanction over independent agencies appears to be far more effective than the sanction over municipalities. \(^{163}\) The net effect of the Council's power is a veto, subject to being overruled by the legislature. The prospect of waiting until the next legislative session for appeal, combined with the

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158. The apparent motivation behind this provision is to allow citizens to have some voice in future development, and to provide affected parties with a forum before any action is taken.
160. Id. § 473B.06 (5) (1).
161. Id. § 473B.06 (13).
162. Id. § 473B.06 (6) (2).
163. See note 165 infra and accompanying text.
burden of amassing support in the legislature will very likely provide ample incentive for compliance on the part of metropolitan special districts. The sanction may even be more effective than it appears. The Council is charged with the “orderly” development of the metropolitan area. Arguably, the Council can utilize its power of suspension to establish priorities of “orderly” development by special districts. For example, if roads were planned and under construction in one part of the metropolitan area, and the sewer district for that segment desired to expand services in a different direction, the council might suspend the latter development plan until the district established sewer mains in a direction consistent with the roads. Another example would be if several municipalities sought to use the same river for sewage effluent. Rather than allowing the metropolitan district farthest upstream to saturate the water to the safety point, the council might establish priorities according to the feasibility of alternatives available to various units.

3. Council Review of Plans and Actions of Municipalities

The Council is also granted the power to review the long term plans of municipalities. Each municipality “shall submit” to the Council for comment and recommendation its long term plans which have a “substantial effect on metropolitan area development, including but not limited to plans for land use.” If the Council finds the plans inconsistent with the development guide, it may order a sixty day delay in action on the project. It then is to notify each local unit of government which may be affected by the plan. Contiguous political units are to be notified in all cases, thus respecting the values expressed in the Dumont case. Upon the request of any government which has been notified, the Council is to conduct a hearing where the parties involved may present their views. Finally, the Council is given statutory authority to mediate and attempt to resolve differences of opinion with respect to the plan in controversy.

If the Metropolitan Council disagrees with the proposal of a municipality, the sanction which may be applied is weak. There exists a serious gap in the statute in the event the Council de-

164. MINN. STAT. § 473B.06(5) (1967).
165. Id. § 473B.06(7).
166. Id.
168. MINN. STAT. § 473B.06 (7) (1967).
clares the sixty day delay, calls a public hearing and yet is unable to resolve differences of opinion over the proposal in controversy. The net effect is that a municipality tenacious enough to hold to its plans and perhaps suffer some adverse publicity may effectively override metropolitan interests unless judicial action is initiated. However, it is undesirable to litigate these questions as it is questionable whether courts are competent to deal with the technical problems associated therewith, and, it is agreed, the choice of land uses are best made outside the courts.169

4. The Vague Standard for Council Intervention: Substantial Effect on Metropolitan Development

Both as to agencies and municipalities, the Council, not the agency or unit of government, is to determine whether a given course of action will have area-wide impact.170 Provision for review of agency plans represents a new governmental function. For municipalities the role of the reviewing body has been strengthened, although the vague standard provided in the statute presents difficulties. Determination of what has a “substantial effect on metropolitan development” will be a difficult task for the Council as well as for a municipality.

Three questions may be posed to illustrate elements of the substantial effect test: First, what types of effects are to be considered? Second, how widespread must the impact be? Third, how severe must an effect be to warrant Council review? An obvious type of effect to be considered is one which economically injures citizens of nearby communities. For example, in the Dumont case,171 placement of a shopping center in a previously residential area arguably decreased property values in surrounding communities. Similarly, a new shopping center might dras-

169. The limitations of the adversary process and the specialization of courts evoke serious doubts as to judicial competence in deciding the proper regional allocation of land resources. Indeed, the court may find itself interjected into the troubling and difficult aspects of metropolitan relations and becoming the center of controversy between the white collar, upper-middle-class suburb and the increasingly minority group, lower-income people of the central city.


170. See note 129, supra.

tically alter traffic patterns and increase the tax load on nearby communities which were forced to adjust. Another type of effect is the impact on previous development and planning. In the example above, sewer or water districts might be forced to make extensive alteration. A variation in plans might destroy the feasibility of a planned yet unopened shopping center in a nearby outlying area.

In Dumont,\textsuperscript{172} injury to contiguous communities was dramatized by the fact that they all bordered the block in question. However, the injury may be less widespread with fewer communities and private individuals affected, and still warrant Council review if its impact were severe. Of course, a change in a land use in a community on the fringe of the metropolitan area may have neither a widespread nor severe impact on the entire area. Taken together, however, these three questions must be faced in determining whether the plans or actions of a municipality substantially affect metropolitan development.

Another difficulty which arises out of the vagueness of the standard is the danger that a local determination of what substantially affects metropolitan development may differ from the Council’s view. For example, construction of a shopping center might be underway following a determination by the locality that it did not affect area development, only to have the Council learn of the plan and reach a contrary conclusion. In this circumstance the language of the statute puts the burden on the municipality to submit questionable matters.\textsuperscript{173} It should be noted that the Council is far less likely to be tardily informed of the plans of independent districts because the Council has a representative on each special district board. However, no similar communications link exists between municipalities and the Council. Ideally, interested and affected parties might, through filing complaints,\textsuperscript{174} provide a check to local action and prompt early submission of questionable cases to the council.

While the vagueness of the standard presents problems, it may also be seen to be beneficial to the Council. For example, in the early years of its existence, members may hesitate to vote

\textsuperscript{172} Id.

\textsuperscript{173} MINN. STAT. § 473B.06(7) (1967).

\textsuperscript{174} The statute currently makes no provision for the receiving of complaints by the Council. The authority is implicit, however, since the statute states that agencies and municipalities “shall submit” plans or matters which have a substantial effect on metropolitan development. A unit which proceeded to act on such a plan without submission would be in violation of the law.
in favor of intervention in every case where there is arguably a substantial effect on metropolitan development and thereby provoke a direct confrontation with a locality which is not in complete conformance with the comprehensive guide. The standard allows the Council to develop public acceptance and a wide base of support before completely entering the political arena. Thus, what constitutes a “substantial effect” may become more inclusive as time passes and the needs of the metropolitan area dictate, much as the commerce clause of the Federal Constitution was enlarged during this century.

5. Council Review of Applications for Federal Funds

Perhaps the Council's most important function is the review of applications for a wide range of federal funds by metropolitan area government units and independent commissions.\textsuperscript{175} Where review by a regional agency is required by federal law, each unit applying for funds is to transmit the application to the Council for its comments and recommendations which become a part of the application. The Council is to comment on whether or not the proposed project is consistent with the comprehensive development guide for the area. These applications involve substantial sums of money to local governmental units—up to fifty per cent of capital costs for park and sewer projects, for example, and up to eighty per cent if the criteria for bonus grants are met.\textsuperscript{176} Since applications for these funds will exceed the funds available, the chairman of the Council has predicted, in reference to the comments and recommendations by the Council, that “as a practical matter, a negative comment by the Metropolitan Council will have a conclusive adverse effect upon the [federal] grant application.”\textsuperscript{177} The power of review over applications therefore provides an extremely potent sanction with which the Council may implement the development guide and coordinate development in the metropolitan area.

6. Other Duties and Powers

In addition to the duties and powers discussed above, the Council has been granted authority to develop a center for collection of data on the metropolitan area for use by the Council and

\textsuperscript{175} Minn. Stat. § 473B.06(8) (1967).
\textsuperscript{177} Hetland, \textit{The Metropolitan Council}, 53 Minn. Municipalities 41, 42 (1967).
other government units. It is authorized also to conduct program feasibility studies and institute demonstration projects in certain areas. It may appear before the Minnesota Municipal Commission if the proceedings involve a change in a boundary of a government unit in the metropolitan area. The Council is also authorized to study the feasibility of annexing, enlarging or consolidating government units in the metropolitan area. The close ties of the Council to the legislature are evidenced by the studies and reports the Council is charged to provide. The Council is to research the following problems in the metropolitan area: air pollution, the acquisition and financing of parks and open spaces in and around the area, water pollution, disposal of solid waste material, tax equalization, assessment practices and advance land acquisition. All studies are to include recommendations as to the governmental organization best suited to discharge the powers recommended. Since the Council is given express statutory authority to recommend legislation for the metropolitan area, the conclusions drawn from various studies will be directed toward that end and therefore serve more than a purely educational purpose. Finally, recommended legislation for the metropolitan area is to include an analysis of the organization and function of the Council itself. Consequently, the Council will play a significant role in determining the scope of its own functions in the future.

E. Evaluation and Proposals

1. Control Over Special Districts

The powers of the Council fall short of enabling it to maximize the values of welfare and efficiency. First, the Council will be able to coordinate future development by special service districts and thereby promote efficiency. However, the Council is without authority to coordinate the operations of existing service districts (operating powers) as was originally proposed in an alternative bill. The proposal to give the Council operating powers sought to render specific independent districts responsible to an elected body in the area, and not to the legislature.

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179. Id. § 473B.06(10).
180. Id. § 473B.06(12)(1).
181. Id. § 473B.06(12)(2).
182. Id. § 473B.04(1)(6).
183. Id. § 473B.04(6).
184. Id.
185. See note 156, supra.
The benefits of this proposal, particularly under an elected council, are that the metropolitan area as a whole would be able to determine the level and quality of services for which it was willing to pay. Responsibility and control would be centralized in the Council, rather than diffused by the pancake effect. Second, the area would benefit by any economy of scale realized through a broader base of operations of these functions. Third, giving the Council operating powers would expand the territorial jurisdiction of most districts. This would reduce if not eliminate tax-service cost disparities in different municipalities within the area. Thus, expanded jurisdiction would make it possible for the Council to raise adequate revenues in an equitable manner.

The above discussion may be illustrated by application to sewage disposal in the metropolitan area. The Minneapolis-St. Paul Sewer District has boundaries coterminous with the city limits of the two cities. It supplies service on a contractual basis to thirty-seven municipalities surrounding the cities. The metropolitan area is also served by the North Suburban Sanitary District as well as the facilities of municipalities with their own sewage plants. Finally, some areas are using private septic tanks. With operating powers the Council would be able to take affirmative action to create a consistent system of sewage disposal in the seven county area. Jurisdiction would include all of the above districts. The point of view of the entire area would be represented and would enable determination of the regionally most efficient plan of sewage disposal whether a central disposal plant or a series of smaller plants. Finally, all citizens would have representation, whereas currently those municipalities on a service contract are not represented on the board of the central district.

The Council, therefore, should be charged with the responsibility of operating control over independent commissions in the entire metropolitan area such as the Metropolitan Airport Commission, the Metropolitan Transit Commission, and the sewage districts. The special district has been an effective means of providing services to the metropolitan areas. There is strong likelihood that the special district will continue to be used to attack multijurisdictional problems in the metropolitan area.

Prospective examples include area parks, a metropolitan zoo, and area-wide health facilities. It is desirable, however, to maintain a balance among local units, the Council and the state. The state legislature should, therefore, be the judge of what governmental services and functions demand area-wide attention. To the extent that any new districts fail to include certain areas of the metropolitan area there will be financial inequities in the revenue collected for their support, as well as a potential inequity in the quality of service received by citizens of different municipalities. Control by the Council can substantially lessen these problems.

2. Election of Council Members

The Council as it is organized does not encourage citizen pressure and control. This stems primarily from the method of selecting Council members. The election of members rather than their appointment would render the Council politically accountable to local citizens. The argument that the Council is basically a policy making body and not purely a coordinating and administrative agency has great merit. Decisions made by the council regarding the future development of the area which will evidence the development guide are founded in policy. The policy will be formulated on the basis of public hearings and extensive research, but nonetheless there will be many policy decisions by the Council which will go into the plan. The creation of the development guide, and the means of implementing the guide through controlling the financing of local projects cannot be called purely "administrative." Moreover, since many applications by municipalities will be for capital improvements, the Council's decision one way or the other will affect the tax rate in that municipality. It follows that though the Council's present powers are basically negative, the decision whether to exercise these powers is a legislative decision, and not merely an executive action. The Council should, therefore, be responsive through the electoral process to the citizens in the Twin Cities metropolitan area. There seems to be no valid reason to delay switching to elective representation. If the Council were charged with the operation of metropolitan area-wide service districts, the case for an elected council would be stronger. This would greatly simplify the confusion which arises from fragmented government, and provide central area-wide control.
3. **Automatic Reapportionment**

Although the Council is presently apportioned according to population, it would be desirable to provide for automatic reapportionment at given intervals, or if growth becomes disproportionate, beyond fixed levels in any given district. The statute currently is silent on redistricting. Thus any challenge would have to be resolved through litigation. A wiser policy seems to be to establish standards before rather than after a conflict. Another reason to attempt to keep the appointments to the Council by state senatorial districts is so that any future legislative session could grant operating powers and provide for elected officials without disrupting the continuity of the group in office.

4. **The Council's Power of Review of Municipal Actions**

The Council's powers should be strengthened in the area of reviewing municipal planning and land use conflicts. One method would be to allow the Council to initiate court action for the resolution of a conflict between a municipality and the development guide, or a conflict between two municipalities. If this approach were followed, the standards set in the development guide could be established by statute as prima facie, and the burden put on the municipality to justify the conflicting use. However, it is desirable to avoid litigation. The function of the Council is to mediate and coordinate, not become a party to the conflict. A wiser policy would be to give the Council the same type of review over municipalities as it has over agencies: a veto subject to review by the legislature. However, the resolutions of conflict between municipalities need not be foisted upon either the courts or the state legislature when it could best be handled on a metropolitan governmental level.\(^\text{188}\) The Council, therefore, should have an indefinite power of suspension over projects of municipalities which have an impact that is inconsistent with the metropolitan interest.

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\(^{188}\) It may be argued that, as the actions of local units affect the entire metropolitan area, so the actions of the metropolitan area affect the entire state, and therefore the state legislature should ultimately resolve disputes of this nature. However, this result is undesirable. For example, there is a lengthy delay between legislative sessions, whereas the council meets monthly. Secondly, the council's size is better suited to the presentation of these issues, as opposed to the entire legislature. Finally, in the context of the localism-centralism conflict, there is not apparent need to have appeal both to the council and to the legislature.
5. **Power to Initiate Action**

In connection with the proposal for control over special districts, it would be advantageous to vest power in the Council to initiate actions. Currently the powers of the Council are largely negative in character. The Council is, therefore, basically a reacting organization. It must wait and hope local communities produce plans in accordance with the development guide. A more sound approach would be to give the Council power to exercise leadership through initiation of actions. This could be done, to begin with, with metropolitan parks and open spaces. For example the Council could apply for federal funds for this use, and/or use the power of eminent domain to acquire land for these uses in the future. This result seems preferable to the saturation of the area with numerous limited purpose independent special districts, as it becomes necessary to perform an increasing number of government services on a metropolitan-wide scale.

6. **The Council and State Agencies**

The relation between the Council and other state agencies, such as the Highway Department or the Pollution Control Agency should be clarified. All these agencies deal with problems in the metropolitan area. A decision by the Pollution Control Agency, for example, regarding an industrial site on a river may upset the plan of another community downstream in the metropolitan area to use the river for recreational purposes. Statutory provision should be made for communication between these agencies and the Council as a minimum. In the event of conflict between a state-wide agency and the Council, the state legislature would then be an appropriate place to which to appeal. Ideally, provision could be made so the agencies could work together in the earliest planning stages and avoid any conflict.  

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VI. CONCLUSION

The problems created by massive urban growth are unlikely to diminish in future years. Problems which ignore jurisdictional boundaries demand a coordinated attack from a governmental authority capable of commanding adequate human and financial resources. One writer has observed that, “[i]n the per-

189. An informal arrangement has been made with the Highway Department. Metropolitan Council, Newsletter, vol. 1, no. 6, May 1968.
spective of the next twenty-five years the question really is not whether, but how, metropolitan governmental arrangements within metropolitan areas will be achieved. 190

Minnesota has, through the creation of the Metropolitan Council, undertaken a significant experiment in metropolitan area decision making. The Council is a new governmental structure which has high political feasibility. Appointed representation on a one-man-one-vote principle avoids the problems of parochialism which have plagued constituent unit structures such as voluntary councils of governments and federalism. The Council is in a position to coordinate the development of special districts. Its procedure for review over municipal projects which affect the metropolitan area should reduce clashes between local units arising from policies of “municipal mercantilism.” Finally, the function of review of applications for federal funds will allow the Council some leverage with which to implement area development according to a plan rather than in the haphazard manner of the past.

The Metropolitan Council furthermore illustrates the role of the state government in handling metropolitan problems, for the state government has the responsibility to establish local governmental structures capable of meeting the demands of citizens. Finally, by creating a structure tied closely to the legislature, the state has reasserted itself in the balance of the federal system. Federal-urban grants flow through an arm of the state, and, arguably, program coordination can be achieved on all levels of government.

It seems paradoxical at first blush to create a new layer of government to coordinate the many which currently exist. However, it must be recognized that any reorganization of government in metropolitan areas involves fundamental redistribution of decision making power. If democratic values are to be realized, decision making should be placed on every level where citizens have both a need and a desire to participate. This reasoning applies with equal strength to decision making in the ghetto191 as well as to the broader metropolitan area. In this respect the Metropolitan Council has great potential to evolve into area-wide democratic machinery to deal with metropolitan problems.

190. Dixon, New Constitutional Forms For Metropolis: Reapportioned County Boards; Local Councils of Governments, 30 LAW & CONTEMP. PROB. 57, 68 (1965).
191. See REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 283–89 (Bantam ed. 1968).