THE DEFEAT OF THE TAMMANY-GAYNOR CHARTER

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THE career of the "Tammany-Gaynor" charter for New York City, which failed of passage at the last session of the New York legislature, was a curious episode in the history of charter making. Its defeat was a signal triumph of civic coöperation.

For some years the need of revising the charter of the city of New York has been under discussion. There has been no official compilation of the laws relating to New York City since 1882, when the legislature adopted the consolidation act, codifying the laws relating to the city of New York as then constituted. In 1897 the city of Brooklyn and other communities were consolidated with the city of New York to form the Greater New York. The government of the consolidated city under a borough system was provided for in the Greater New York charter passed in that year. That statute was a bulky instrument which established the outlines of the new government and prescribed numberless details, but did not contain all the law relating to the city. On the contrary, it left in force and extended to the consolidated city all provisions of the consolidation act and of all other statutes relating to the former city not inconsistent with the provisions of the new charter, and did not repeal any provisions of law applying to the other merged localities which were not inconsistent with the new charter.

In 1901 the Greater New York charter was extensively revised, but no substantial change was made in the general condition of the laws affecting the city. To ascertain the law on any question relating to the government of the city has thus become a task attended with great difficulty and uncertainty. This condition, as well as the obscurity of much of the legislation itself, has given rise to a well founded demand for a comprehensive revision of the charter. Experience has also indicated the desirability of some changes in the distribution of administrative functions; such changes, however, could be made and have in many instances been made by specific amendments to the existing charter.

A commission was appointed in 1907 to inquire into the government of the city and its charter and to suggest changes. That commission reported to the legislature January 1, 1908, recommending important changes in the government of the city and advocating the enactment of a home rule char-

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ter which should provide only the outlines of the city government, and of an administrative code to provide for administrative details and to be subject to amendment and amplification by the local legislature. Under an act passed by the legislature of 1908, the so-called Ivins commission, consisting of the former commission with additional members, was appointed to prepare such a charter and administrative code. Drafts were prepared and submitted to the legislature of 1909, too late in the session and too incomplete in form, however, to permit of adequate consideration in that year. Some hearings were had which developed wide difference of opinion on some of the principal recommendations, and a special joint committee of both houses of the legislature was appointed to examine and consider the proposed charter and administrative code.

The legislative special committee (known as the Hammond committee) reported to the legislature of 1910 and expressed its approval of some of the recommendations of the Ivins commission, but disagreed with others. The legislature enlarged the membership of the special committee and instructed it to draft a charter along the lines suggested by it. The committee proceeded to carry out these instructions with such energy as to present a proposed new charter at the very same legislative session,—in the form at first of twenty-six bills, each containing a separate chapter, afterwards consolidated into one bill known as the Hammond charter. The result of this hasty work was so defective that the legislature declined to pass it, but despite the protest of the Citizens Union that the work of drafting a charter should be done by experts allowed enough time to do it properly, extended the life of the committee and directed it to report further at the session of 1911.

No substantial progress was made in the work of charter revision until after the State election in November, 1910, when a democratic governor and a democratic legislature were elected. Mayor Gaynor, who had been the only candidate on the Tammany ticket elected the preceding year and who found himself in a minority in the board of estimate and apportionment, the city's chief governing body, apparently thought that he saw an avenue of escape from this, to him, uncomfortable situation. He put his corporation counsel to work upon a charter to his liking. When his intention of presenting it was announced, the legislative special committee, with the aid of experienced legislative draftsmen, hastily prepared a revised edition of the Hammond charter. Both bills were introduced in the legislature March 31, 1911. Tammany Hall, which dominated the legislature, let its intention be known of passing the mayor's charter, generally spoken of as the Gaynor charter, and the Hammond charter was speedily lost to sight.

The Gaynor charter was ostensibly based on the Hammond and Ivins charters, but this was only a pretence. It did not contain the important features of either. It left substantially unchanged in constitution the noto-

riously inefficient board of aldermen for which the Ivins commission had recommended the substitution of a small unpaid council—a recommendation with which the Hammond committee however did not agree. It continued the condition under which jurisdiction over the streets is divided between the borough presidents, the street cleaning commissioner and the commissioner of water supply, gas and electricity, which the Ivins commission attempted to solve by concentrating this jurisdiction in a single department of street control, and which the Hammond committee attempted to solve by a simplification and coördination of powers. It continued the division of control over city hospitals among the departments of charities, health and the trustees of Bellevue and Allied Hospitals, to cure which the Hammond committee had recommended a single department of hospitals under a board of trustees and a commissioner appointed by them. It did not attempt to solve the problem of police organization, as to which the Ivins commission had recommended that a superintendent of police appointed from the uniformed force should be the executive head of the uniformed force, a recommendation with which the Hammond committee had disagreed. It made no constructive improvements in the government of the city sufficient to justify a new charter; it did not embody a revision of the laws relating to the city. Its whole purpose was to satisfy a mayor greedy for power and impatient of the limitations which the voters had placed upon him. The bill proposed to reverse the result of the 1909 municipal election by transferring to the mayor's appointee, the chamberlain, some of the most important bureaus and functions of the comptroller; by transferring directly to the mayor the bureaus of buildings now under the borough presidents; by giving the mayor the appointment of a city architect and a city engineer who were to be the architect and engineer of the borough presidents; and by largely increasing the mayor's power in other respects. The mayor and his appointee, the corporation counsel, were made a majority of a new board of administrative detail with power to determine all questions of the powers of all officers and departments. At the same time provisions for the mayor's accountability were weakened. The commissioners of accounts were reduced in number from two to one and prohibited from making investigations except when directed by the mayor. The comptroller's bureau of municipal investigation and statistics was taken away from the comptroller and its powers transferred to the commissioner of accounts appointed by the mayor. The comptroller's auditing power was taken away and transferred to the corporation counsel appointed by the mayor.

Civil service restrictions were to be broken down by abolishing the supervisory power of the State civil service commission and giving the municipal civil service commission practically unlimited power. For the present unpaid board of education a new paid board appointed by the mayor was substituted, and the political appointment of teachers made possible by abolishing the

requirement for their appointment upon the nomination of a non-political board of superintendents from the highest candidates on the examination list. Other dangerous innovations were contained in the bill. These changes if separately proposed would inevitably have been defeated; but it was proposed to pass them as part of a defective and hastily prepared bill of 423 printed pages, miscalled a charter, but in fact adding by so much to the confusion and inconsistencies of the existing law.

Throughout the career of this remarkable bill, its advocates sought to avoid public scrutiny as much as possible. Immediately upon its introduction the bill was referred to the standing committees on cities of the two houses of the legislature and hearings upon it were announced to commence within a month from the time of its introduction, barely allowing time for its printing and examination by the public. This attitude served as a challenge to civic spirit. Representatives of a number of business and civic organizations joined together to study, expound and combat the bill. A vigorous opposition was organized and made itself felt in the public press and at the hearings. A joint statement making clear the real significance of the bill was issued by representatives of the City Club, the Allied Real Estate Interests, the Citizens Union, the Greater New York Taxpayers Conference, the Public Education Association and the Brooklyn League. A report containing an analysis of the provisions of both the Gaynor and the Hammond charters was prepared and published by a joint committee of Brooklyn civic organizations on the charter. Separate statements were also issued by the Citizens Union, the Civil Service Reform Association, the Public Education Association, the Bar Association and others. Vigorous protests were made at the hearings by a number of officials, private individuals and representatives of civic organizations, among them, Borough President McAneny, President Mitchel of the board of aldermen, Comptroller Prendergast and Deputy Comptroller Douglas Mathewson, and representatives of the Bureau of Municipal Research, the Educational Alliance, the Board of Education, the Public Education Association, the Civil Service Reform Association, the State Charities Aid Association, the Charity Organization Society and the Citizens Union. So seriously was the project damaged by the criticism to which it was subjected that it was withdrawn for revision after public announcement by the committee that, among other changes to be made, the comptroller's auditing power would be restored and the board of administrative detail abandoned.

Continuing their former tactics the advocates of the charter announced that it would be revised as quickly as possible and passed without further consideration. A protest against so indecent a proceeding was forwarded to the legislature, signed by the City Club, the Civil Service Reform Association, the Bar Association of the city, the Public Education Association, the Allied Real Estate Interests, the Citizens Union, the Brooklyn League,

the Joint Committee on Charter Revision of Civic Bodies in Brooklyn, and the Greater New York Taxpayers Conference. Even this protest bade fair to be unheeded until Governor Dix announced on July 10 that he would not sign a charter for the city until the people of the city had been afforded an opportunity to know its contents.

The charter, as revised by the cities committees of the two houses of the legislature and known as the Cullen-Foley charter, was introduced on July 13. It turned out to be an entirely new bill containing 580 printed pages. While less incomplete in substance and less incompetent in point of draftsmanship than the Gaynor charter, it still lacked every requisite of a new charter and remained a cover for many vicious provisions. It retained the bad features of the former draft and introduced new ones. It remained essentially a "ripper" bill transferring to the mayor powers of other elected officials. Its advocates sought to justify this course on the plea that it would be beneficial and in accord with modern ideas to concentrate powers and responsibility in the mayor, but belied their professions by providing that responsibility should be diffused and the ballot lengthened by making the office of chamberlain elective, and by making the president of the finance committee of the board of aldermen (chosen by the usual Tammany majority of that board) a member of the board of estimate composed of officers elected by the people. There was, however, no concentration of power and responsibility, but instead a concentration of arbitrary and irresponsible power. The bill provided that all official acts should be presumed to be lawful. It did away with accountability by permitting the mayor to order the destruction of records; by abolishing the comptroller's power of audit as to amounts under \$5000; by transferring to the mayor the comptroller's power of requiring reports from the various departments; by permitting the commissioners of accounts to investigate city departments only when directed by the mayor; by authorizing the mayor to appoint a substitute to take his place for whom he would not be responsible; and by taking away the governor's power to remove a delinquent mayor. It violated the principle of home rule by creating mandatory offices. It was filled with "jobs" and "jokers" for the benefit of the hungry politicians of Tammany Hall, who hoped to profit under cover of gratifying the mayor's desires and giving the city a new charter.

Of the new provisions, the one which attracted most attention was the "subway veto," so called. Between the time of the introduction of the Gaynor charter and the preparation of the Cullen-Foley bill, the mayor had found himself in a minority in the board of estimate and apportionment as to contracts to be made for the operation of subways to be constructed by the city. In order to resolve this conflict in his favor, he caused to be inserted in the Cullen-Foley charter a provision giving him a veto over grants of such contracts by the board. Public indignation at the tac-

tics employed in support of the charter manifested itself in unmistakable fashion. The provision establishing a paid board of education and other provisions tending to throw the school system into politics were vigorously assailed by educators of prominence all over the country, headed by President Lowell of Harvard University and President Butler of Columbia University, with each of whom Mayor Gaynor engaged in a controversy. He indulged in similar controversies with other critics such as Lyman Abbott, William J. Schieffelin and Frederic W. Hinrichs, in which he devoted his energy to attacking the critics rather than to defending the charter. A charter conference was organized, composed of representatives from most of the organizations which signed the protest to the legislature. The charter was considered chapter by chapter at a series of conferences arranged by the City Club at which the supporters of the charter though invited failed to appear, and its many vices were pointed out by a number of competent critics. The State chamber of commerce held a special meeting and adopted resolutions, asking that opportunity for study of the charter be afforded.

The legislative committees held hearings on the bill during but five days in the middle of summer, commencing August 21. At those hearings the charter was bitterly assailed, among its opponents there being many representative men. During the hearings J. Hampden Dougherty, who had been an active member of the Ivins commission and had been consulted by Mayor Gaynor in the revision of the Gaynor charter, delivered an address before the City Club in which he clearly pointed out the objectionable character of the Cullen-Foley bill.

The majority of the legislative committees throughout the hearings showed themselves to be open partisans of the charter scheme and assumed a truculent attitude toward its opponents, but the storm of criticism was so effective that the committees promised before the close of the hearings that the comptroller's power of audit would be restored and at the termination of the hearings stated their intention of again revising the charter and of omitting some of the other most objectionable features.

Another revision was at once put under way, the results of which were submitted to the legislature on September 18, after it reconvened, in a most remarkable document consisting of some 4000 amendments to the Cullen-Foley bill, contained in a pamphlet of 159 printed pages. The committees in charge refused to grant hearings to objectors against this new revision and proposed to pass it without opportunity for public examination. This emergency found the civic spirit of the city still alert and active. A large delegation representing a number of business and civic organizations had attended before the governor to seek his aid against the contemplated outrage. Robert S. Binkerd, secretary of the City Club, was in charge of the delegation and addresses were made by Alfred E. Marling representing

the City Club, Russell Benedict, president of the Brooklyn League, and Raymond V. Ingersoll, chairman of the executive committee of the Committee of One Hundred which had conducted the successful municipal campaign of 1909, the results of which were to be largely undone by the bill. Immediately upon the introduction of the amendments the Citizens Union and the City Club sent a committee composed of J. O. Hammitt, secretary of the Citizens Union, the secretary of the City Club, and the writer, as chairman of the charter committee of the Citizens Union, to establish itself in Albany in order to make such instant examination of the revision as was possible and to point out its meaning. The information thus given was disseminated through the newspapers by means of daily statements. In this way the public speedily learned the main facts about this latest draft.

This revision retained untouched some of the worst features of the former draft, such as the "ripper" provisions and the subway veto. It made only a pretense of doing away with some of the others, e.g., it nominally restored the comptroller's auditing power, but crippled it by making conclusive upon the comptroller the certificate of the city engineer appointed by the mayor as to compliance with contracts; it nominally continued the unpaid board of education but placed over it a salaried president; it ostensibly restored the board of hospital trustees but placed the active management of the hospitals in the hands of a superintendent appointed by the mayor. It actually added new and vicious features,—notably a provision giving the mayor a "suspensive" veto over the whole or any part of the budget adopted by the board of estimate, which, however, that board could override only within five days and upon which it could take only one vote; so that with the power in his hands of appointing the majority of the committee which was to prepare the budget in the first place the mayor was given substantial control over the entire city budget.

The entire membership of the board of estimate and apportionment, excepting only the mayor and the president of the Borough of Queens, who was then under charges upon which he was subsequently removed from office by the governor, protested against the passage of the bill. A striking manifestation of the opposition to the bill was afforded by a mass meeting at Cooper Union to protest against its enactment, speakers at which were J. Aspinwall Hodge, Borough President McAneny, Comptroller Prendergast and William M. Ivins, chairman of the Ivins commission. The press was practically a unit against the bill.

In utter disregard of the interests and the clearly indicated wishes of the people, the Tammany organization used every effort to force the bill through the legislature. After making still further amendments in a pretence of eliminating some of the most vicious features of the bill, it actually succeeded in passing the bill through the Assembly by a majority of one vote obtained by inducing one weak member to change his vote against it,

but it was unable to secure enough votes to pass it in the Senate, and abandoned the bill on September 30. The debate in the Assembly indicated that the votes cast in favor of the bill were not based on any familiarity with its provisions. The only arguments made which indicated any knowledge of the contents of the bill were made by Assemblyman James A. Foley, chairman of the standing committee which had introduced the bill, and by William Allaire Shortt, a member of the committee, who had been an able and assiduous collaborator in all the charter drafts since 1909, and who first endeavored to eliminate from the bill as many of its weaknesses as possible, and later performed a great public service in publicly pointing out and opposing its evil features.

Despite the failure to pass the charter it became known that another attempt would be made to pass it in the legislature of 1912. The opponents of the charter made it an issue in the election of members of the Assembly in November, 1911. As a result of that election the Democratic Assembly was replaced by one with a strong Republican majority, and the defeat of the charter was thus made certain and complete.

That a political machine should have come so near to success in a shameless attempt to impose a new form of government on the greatest city in the country without consideration and against the will of its people in a "ripper" bill pronounced by all competent and disinterested critics to be both vicious and grossly defective, might well tend to discourage the optimistic student of municipal affairs; but on the other hand, the active, intelligent and self-sacrificing public spirit displayed in the fight conducted against the charter, and the final defeat of the project by the force of public opinion, awakened and impelled by the energetic and effective coöperation of business and civic organizations, may be taken as an augury of the increasing efficiency of an aroused civic consciousness.