LEGISLATIVE INTERFERENCE IN MUNICIPAL AFFAIRS AND THE HOME RULE PROGRAM IN NEW YORK

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LEGISLATIVE interference in municipal affairs has for many years been the worst stumbling block in the path of municipal reform. Nowhere have its evils been more keenly felt than in the state of New York. The protests against it date at least as far back as 1846, when Henry C. Murphy of Brooklyn vainly urged upon the constitutional convention which was revising the state constitution, the adoption of a prohibition of special acts for the incorporation of cities and villages. Since then the evil has grown by leaps and bounds. Proposals looking to the protection of cities from it were again made in the constitutional commission of 1872 and by the Tilden commission of 1875, but were again unsuccessful.

In 1890 the Fassett committee appointed by the state senate to investigate the subject of municipal government in the state reported that in the six years from 1884 to 1889 inclusive the legislature had passed 1284 acts relative to the thirty cities in the state, of which 390 affected the city of New York. In the one year 1886, as Professor Goodnow says (*Municipal Home Rule*, pp. 23, 24): "280 of the 681 acts passed by the

¹ Mr. Tanzer has been a member of the committee on legislation of the Citizens' Union of New York City for a number of years, and chairman of the Union's charter committee. In the latter capacity he has been actively concerned in the study and discussion of all the charters recently proposed for New York City, commencing with the Ivins charter in 1909, and was particularly active in aiding in the defeat of the Gaynor charter in 1911, about which he wrote an article which appeared in the first number of the NATIONAL MUNICIPAL REVIEW (vol. i, p. 61). He is counsel for the Municipal Government Association of New York State and chairman of its committee on municipal home rule. The municipal empowering act and the home rule constitutional amendment were drawn by Mr. Tanzer with the assistance of a number of others, most prominent among whom was J. Hampden Dougherty of New York. The optional city charter bill was drawn by Carlos C. Alden, dean of the Buffalo Law School, and has recently been revised and amended by Mr. Tanzer. The non-partisan municipal election law was drawn by William Allaire Shortt of New York. On behalf of the Municipal Government Association, Mr. Tanzer has taken part in substantially all the activities mentioned in the article, the political activities having been managed by J. O. Hammitt, Robert S. Binkerd and Walter T. Arndt, all of New York. Mr. Tanzer has intervened for the Association and filed a brief in the case of Hamitt vs. Gaynor now pending in the New York supreme court, involving some questions as to the interpretation of the municipal empowering act. An article which he wrote on the home rule bill appeared in *Bench and Bar* for April, 1913.

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legislature, i.e., between one-third and one-half of its entire work, interfered directly with the affairs of some particular county, city, village, or town, specifically and expressly named."

By the time of the constitutional convention of 1894 which prepared the present constitution, the situation had become so acute as to compel attention. After careful consideration and prolonged discussion, the convention hit upon an expedient which was expected to stem the tide of special legislation without prohibiting it altogether. The constitution of 1894 divided all the cities of the state into three classes according to population (New York City being then alone in the first class); required every bill relating to a single city or to less than all the cities of a class to be submitted to the mayor in New York City and to the mayor and legislative body in every other city affected for acceptance, after a public hearing; and required that every such bill not so accepted could become law only upon being repassed by each house of the legislature subject to the governor's veto as in the case of other bills.

The framers of the constitution of 1894 hoped that special legislation if first submitted to the local officials after a public hearing would be limited to such as was actually needed by the localities to be affected and that its volume would be greatly diminished. This hope has not been realized. Special local legislation has increased in constantly growing volumes. A somewhat rough calculation of the number of special laws relating to particular cities, villages, towns and counties passed in each year since the enactment of the constitution of 1894 as compared with the total number of laws passed shows the following result:

YEAR	SPECIAL AND LOCAL LAWS AFFECTING CITIES, TOWNS, VILLAGES AND COUNTIES	ALL LAWS PASSED	PERCENTAGE
1895	433	1045	41
1893	460	1003	45
1897	332	797	41
1898	238	676	35
1899	265	741	35
1900	279	776	35
1901	303	734	41
1902	236	61	38
1903	270	645	41
1904	282	760	37
1905	333	761	43
1906	292	699	41
1907	336	764	43
1908	216	524	41
1909	235	596	39
1910	259	707	36
1911	303	903	33
1912	194	553	35
Total.....	5266	13301	39

During the eighteen years which have elapsed since the adoption of the constitution of 1894 special legislation of this character has not diminished, but has largely increased in quantity and has also increased in its proportion to the total amount of legislation. The condition remains substantially the same as that described by the Fassett committee.

This special legislation for the most part is or ought to be unnecessary, because it deals with matters which the localities affected ought to be allowed to deal with in their own way. For example, among the laws passed at the session of 1912, were laws prescribing the manner in which the amount due to contractors for public work in Albany should be ascertained and paid; authorizing Albany to improve its river front and providing the method of procedure; creating a board of sewer commissioners for the village of Albion; increasing the amount of sewer construction bonds which might be issued by Binghamton from \$125,000 to \$135,000 and the amount which may be issued in any one year from \$25,000 to \$35,000; creating a firemen's relief and pension fund for the fire department of Binghamton; authorizing the common council of Buffalo to fix the salary of the superintendent of education; increasing the amount of bonds which may be issued by Buffalo for the construction of a municipal hospital from \$250,000 to \$300,000 and the rate of interest from 4½ to 6 per cent; authorizing the division of Buffalo into tax sections for the purpose of assessing taxes; authorizing Buffalo to construct buildings for conventions and the like; changing the title of sergeants of police in Buffalo to lieutenants of police, changing the salary of superintendent of horses in the police department, etc.; authorizing the reinstatement of firemen in Buffalo who have resigned; directing the park board of Buffalo to recommend to the common council ordinances for spraying and treating trees and shrubs adjacent to streets and public places; increasing the maximum number of policemen in the village of Canandaigua from five in all to one for every one thousand inhabitants and fixing the salary of the acting chief of police; authorizing payment of the amount due the Grattan Construction Company for constructing a certain sewer in an alley in Cohoes; authorizing Corning to pave and grade certain streets; authorizing the common council of Cortland to establish building lines; authorizing the town of Eastchester to spend \$8000 for a fire engine; raising the salaries of the aldermen of Elmira from \$100 to \$200; authorizing Fulton to borrow \$3575.69 to pay school teachers; providing for a fire marshal in Ithaca; authorizing the board of education of Lockport to reconstruct the Union School building; authorizing the corporation counsel of Mount Vernon to appoint an assistant corporation counsel; authorizing the city counsel of Newburgh to spend \$5000 to entertain delegates to the conventions of the State Firemen's Association and of the Grand Army of the Republic; raising the maximum salary of the deputy city

clerk of Newburgh from \$500 to \$900; fixing the salary of the vice-chairman of the board of aldermen of New York City and of the chairman of the committee on finance at \$4000 each; permitting any head of department in New York City to grant leaves of absence without pay and to make deductions from salaries by way of fine; adding to the New York fire department veterinarians with rank and salaries the same as deputy chiefs; authorizing New York City to convert certain specified market property into dock property; abolishing the grade of doorman in the New York City police department; requiring the comptroller of New York City to pay contractors on the basis of 85 per cent of work done instead of 70 per cent; authorizing the board of estimate of New York City to inquire into and pay the claims of John P. Worstell and Joseph P. McNamara for work, labor and services; increasing from 10,000 to 40,000 square feet the space in the New York hall of records to be allotted to the register and commissioner of records; providing for an assistant counsel to the sheriff of New York County at a salary of \$3000; increasing from \$10,000 to \$12,500 the sum which the common council of North Tonawanda is required to raise annually for the use of the board of fire commissioners; requiring the county clerk of Onondaga County to index unpaid taxes and assessments; authorizing the village of Port Chester to borrow \$3000 to repair the old Willett Avenue fire house; providing for a property clerk in the department of public safety of Rochester; requiring the common council of Rome to designate a single newspaper to publish official notices; providing in great detail for the licensing of dogs in the village of Saratoga Springs; authorizing certain streets in Saratoga Springs to be sprinkled with oil or other substance; fixing the salaries of the president of the common council of Watervliet at \$500 and of the aldermen at \$350.

These are fair samples of the kind of legislation on which the legislature of the state of New York has been expending its time and attention, to the detriment of its legitimate function of legislating for the state at large, and to the injury of the cities and villages in every section of the state, large as well as small.

The compromise of 1894 must be pronounced a failure. The restrictions on special legislation imposed by the constitution of New York have been no more effective than the prohibitions of special legislation which have been contained in the constitutions of other states and for the same reasons: the diversity of conditions in many different cities variously situated and circumstanced makes special legislation absolutely necessary in order to provide for their varying needs; and the demand for special legislation most often comes from within the cities themselves. This demand, however, is largely an irresponsible demand: it comes too often from persons or parties seeking a change in the law for selfish purposes and is addressed to a legislature composed for the most part of repre-

sentatives from other localities not conversant with or interested in the needs of the locality affected and under no responsibility to its people. The real objection lies not against the enactment of special legislation, but against the kind of special legislation enacted, the manner in which it originates and in which it is enacted; not to special legislation as such but to the imposition of special legislation on the city by the legislature. The evil to be corrected is not special legislation, but legislative interference. The remedy is not to prohibit or restrict special legislation, but to do away with legislative interference in municipal affairs by transferring to the cities themselves the right to adopt their own necessary special legislation and to manage their own affairs with only so much control by the legislature as the interests of the state as a whole require.

This remedy—municipal home rule—is now being actively advocated by powerful influences in New York. For many years various cities which have been trying to obtain the enactment of necessary legislation have had bitter experience of the evils of legislative control. No bill could be enacted whose passage could not be made to appear to those in control of the legislature desirable for reasons appealing to them, too often reasons of personal or party advantage. While unnecessary and vicious special legislation was being passed in great profusion, much needed and beneficial special legislation often failed of passage. Cities which desired to change their form of government in some particular respect or to substitute for it a commission form of government or to obtain additional powers could not get their bills through the legislature and often could not even obtain a hearing.

The helplessness of any one city seeking relief from a legislature governed by considerations of party politics and overwhelmed by a mass of proposals for general, special and private legislation was so apparent and so hopeless as to lead the cities to combine for their mutual protection. This combination has been effected along two lines, one official and the other unofficial—the conference of mayors and other city officials and the Municipal Government Association of New York State. The mayors' conference originated in 1910 with the object of bringing city officials together to discuss matters of common interest and to work together for the common welfare of the cities. The Municipal Government Association, organized in January, 1912, was a combination of citizens of different cities who had been striving separately for greater freedom in municipal affairs and who now decided to unite in an effort to obtain a larger measure of home rule for the cities of the state.

The Municipal Government Association promptly formulated and announced a legislative program intended to secure to cities the benefits of home rule. This program comprised the following legislation: (1) A municipal empowering act granting to every city the power of regulating

its own property and affairs; (2) an amendment to the constitution of the state securing these powers against legislative encroachment, authorizing the citizens of each city to adopt and amend home rule charters and prohibiting special legislation concerning purely municipal affairs; (3) an optional city charter bill providing simplified forms of city government which the citizens of any city might adopt in place of their present charter; and (4) a non-partisan municipal elections bill. Bills were drawn to carry these recommendations into effect and were submitted to and approved by a number of men versed in municipal affairs. The first three of these measures were intended to confine to general laws the activity of the legislature in purely municipal affairs and to leave all special legislation on that subject to the city or its inhabitants, the fourth was intended to concentrate attention on the local exercise of these enlarged powers by freeing municipal elections so far as possible from state and national party influences.

Special legislation relating to municipal affairs consists of two kinds of measures—those determining what powers a city shall exercise and those determining how its government shall be exercised and carried on and its local affairs administered. The first of these two classes is rendered unnecessary by the municipal empowering act.

The municipal empowering act proceeds upon the theory that a city should have full power to regulate, manage and control its property and local affairs and that this power should be granted alike to all cities. The act contains such a grant in general terms and for greater caution it contains also a specific grant (which does not operate to limit the general grant) of a number of specified powers which together embrace substantially all the powers now vested in particular cities. This grant of power is not in substitution for, but is in addition to existing powers and fills up gaps in powers now existing in any city. Every existing power is to be exercised in the manner now provided in the charter of the city; the manner of exercising new powers granted by the act is to be determined by ordinance, subject to safeguards imposed by the act itself on the power to issue municipal obligations, to sell or lease real estate and to grant franchises where such power does not now exist.

The constitutional amendment by redeclaring the general grant of powers preserves it against legislative interference and also extends it to villages. The amendment prohibits special legislation regarding municipal affairs, and confers upon the citizens of each city and village the power to enact such special legislation, to be drafted by local commissioners or convention and adopted by referendum. At the same time it expressly preserves the power of the legislature to legislate as to matters of state concern.

The optional city charter bill offers to any city the choice of six differ-

ent forms of government which may upon petition and by referendum be adopted in place of its existing government. This bill would offer a large measure of home rule to all cities pending adoption of the constitutional amendment, and after its adoption to those cities which might not wish to frame individual charters. The forms of government of which the choice is thus given are (1) commission government, (2) the city manager plan, (3) the mayor and council plan with a council of five elected at large, (4) the same, with a council of nine, (5) the mayor and council plan with a council elected by districts or wards, (6) the plan now embodied in the second class cities law (known as the White charter) which adds to the mayor and council a board of estimate and apportionment, a board of contract and supply, and other specified officers and departments.

The non-partisan municipal elections bill would empower any city electing by referendum to come under its provisions to elect municipal officers on a separate ticket having no party designations and would thus carry a step further the idea of separating municipal elections from state and national elections which has been only partly put into practice by the provision of the present constitution requiring municipal elections to be held so far as possible in odd-numbered years.

These bills were all introduced in the legislature of 1913, the constitutional amendment in somewhat different form having already been introduced during the session of 1912. Before their introduction drafts had been widely distributed and publicly discussed. The mayors' conference held at Utica in June, 1912, adopted a resolution urging upon the legislature the grant of enlarged powers to cities and the conference through its legislative committee has been active in support of the entire home rule program. The advocacy of this program was carried on to such good effect that the state platforms of all the leading political parties adopted in 1912 called for the enactment of home rule legislation.

In his first message to the legislature in January, 1913, Governor Sulzer pronounced in support of home rule and in opposition to "legislative tinkering and invasion." In March, 1913, a home rule dinner and conference was held at Albany under the joint auspices of the Municipal Government Association and the mayors' conference at which the legislative leaders and public men of all parties spoke in favor of the home rule program.

The municipal empowering act was passed by the legislature without opposition and was signed by the governor and became law April 7, 1913. The other bills, however, made no progress in the legislature and remained in committee.

Since the enactment of the municipal empowering act there has been some misconception as to what has actually been accomplished by it.

This was due largely to a failure to realize the fact that this measure constituted only a part of the home rule program. The municipal empowering act has extended the powers of cities and has made unnecessary the many enabling acts heretofore introduced in the legislature; it has not put the cities in a position to draw or amend their own charters and so has not dispensed with the necessity of special legislation for that purpose. In some quarters, however, the impression prevailed for a time that the purposes of the constitutional amendment had been attained by the municipal empowering act. That act was dubbed "the home rule law" and a number of special bills amending city charters with respect to administrative detail were vetoed by the governor on the theory that their purposes could be accomplished under that act. This position appeared to find support in an opinion issued from the attorney-general's office.

Subsequently, however, the scope of the municipal empowering act was thoroughly discussed at the mayors' conference at Binghamton in June, 1913, following an able address by Attorney-General Thomas Carmody, which clearly pointed out what the act had accomplished and what still remained to be done. As a result of this discussion, it is believed that a clearer understanding of the situation now prevails. The conference adopted a resolution urging the enactment of the optional city charter bill at the extraordinary session of the legislature which had been called for June 16. The governor after conferring with the legislative committee of the mayors' conference and with representatives of the Municipal Government Association recommended to this session the enactment of that bill and the bill in amended form has been reintroduced; but at the present writing its fate remains uncertain.

Much has thus been accomplished in the direction of municipal home rule in a short time and a great impetus has been given to the movement. The outlook for its success in the near future is bright.