Constitutional Aspects

David Keller

Follow this and additional works at: https://digitalcommons.coastal.edu/jops

Part of the Political Science Commons

Recommended Citation

This Article is brought to you for free and open access by the Politics at CCU Digital Commons. It has been accepted for inclusion in Journal of Political Science by an authorized editor of CCU Digital Commons. For more information, please contact commons@coastal.edu.
Constitutional Aspects

by

DAVID KELLER

I was reading a book last night written by Dick Gregory. He quoted Warren Harding as summing up the presidency by saying, "My God, this is a Hell of a job." And in trying to put together some material to present to you that would be informative and yet not in depth because time will not permit it, is a "hell of a job." Another quote that was also brought to my attention in that same book was from Tom Marshall who was vice president under Woodrow Wilson. He illustrated the positions that vice presidents normally found themselves in with a little story of a gentleman who had two fine sons, one of whom went to sea and the other who became vice president — and neither was ever heard from again. And that is the way your state legislators are fast becoming under the new Home Rule Bill and the Home Rule Amendment to the Constitution. Those of us who go to Columbia will probably not be heard from again in your local municipalities and counties other than by virtue of those things which filter down that may affect your county or local government. Our job now is to legislate on a state-wide basis by general laws affecting the entire state and its population.

The Constitution of 1895 included two articles: Article VII dealing with county governments and Article VIII dealing with municipal corporations. Originally Article VII set forth the requirements for the establishment of counties, the establishment of county seats, the formation of counties and the secession — if you will — of a portion of a county and thereafter joining with another county. Section 7 gave no authority to county governmental units for much of anything. The General Assembly retained plenary power or complete full powers, if you will, to legislate by special act for individual counties or for a combination of counties if they saw fit.

The legislative delegation controlled the county. Of course, at that time you had all of your legislative delegation elected from each county with each county being guaranteed one resident senator and one or more members of the House of Representatives, depending on the population. Therefore, we did not have the problems that were

*State Representative, District Number 62, Florence County.
brought about by reapportionment at a later date. The only taxing authority that the counties had was devolved upon them by acts of the legislature. Article X, Section 6 says that the General Assembly may authorize the county to levy taxes and make expenditures for certain, but very limited purposes: educational purposes, the general administration of the court system within the county, to pay jurors, to pay county officers, to house prisoners, to provide relief for paupers and to carry on county business or the administration of the county. But as you and I well know, a constitutional requirement that said that the General Assembly may do this was never literally followed because the local delegations, historically, since that time have made all of the decisions for their counties. Even though it was a statewide act signed by the Speaker of the House and the President of the Senate and ratified by the Governor, it was a statewide bill that only pertained to that one county and no member of the legislature ever got involved in another county's affairs — whatever they might be — financial or otherwise. So in effect, what you had was total domination of county affairs under the Constitution by the local delegation to Columbia.

The municipal section or Section 8 had a different makeup. The municipalities have always had more in the form of home rule than the counties up until the recent amendment, and it was spelled out in there that they had the right to levy taxes and make expenditures for ordinary operating purposes. In 1966 the legislature set up a special commission to study the revision of the Constitution and in 1969 that special study commission made its final report and recommended what we now call our Home Rule Amendment. What, in effect, it did was combine former Article VII dealing with county government and Article VIII dealing with municipalities or local government into one new Article VIII. In addition, it also gave the counties under the Constitution the same power and the same authority that the municipalities had exercised throughout the past 85 or 90 years under the former Constitution. So, as of the ratification of the new Article VIII, the counties are on an equal footing with the municipalities insofar as the services they can render and the taxing authority that they now have.

However, you can see where some problems did develop and where some real controversy did lie between the county officials and the municipal officials in trying to come up with a compromise or with legislation regarding the implementation of Home Rule. Historically, to obtain fire protection, water service or any type of service outside of the municipality, the legislature would set up special service districts within the counties even though the counties could not provide service.
That was tried again just after the ratification of the new Constitutional amendment on May 7, 1973, by the Dorchester County Legislative Delegation, and it led to the now monumental decision of *Knight vs. Salisbury*. What happened was that the Dorchester County Legislative Delegation passed an act setting up and creating Lower Dorchester County Recreational Area District. This divided Dorchester County into parts with one part encompassing basically one school district in Dorchester County and giving them the authority to issue bonds and set up recreational programs in that area or section of Dorchester County.

Well, the taxpayers in Dorchester County said you cannot do that anymore because of the Home Rule ratified in May and since that time you have created a special district and we do not think that is constitutional. So an action was brought in the judicial circuit which includes Dorchester County. Judge Rosen ruled that the General Assembly no longer had the authority to create special purpose districts within one county. The next step involved an appeal to the State Supreme Court and the Supreme Court's five justices, who we like to believe are the best legal minds that we have in the state. They divided three to two on that decision. By a vote of three to two they affirmed what Judge Rosen had done. However, one of the Justices who concurred with the majority reached it on a different ground. So here you basically have two members of the Supreme Court having one view of the Article VIII, and two having a different view and the fifth having a third view. When our Supreme Court is divided in that manner something must be very difficult.

What in effect the Supreme Court did was to put a gun to the heads of the legislators and say "you move on Home Rule," and we did. In effect, what the implementing legislation that was finally passed last year did was to repeal all of the statutes dealing with special legislation that had built up since 1895 and to replace it with one bill, one act. The only thing that was not abolished of any real consequence in the municipal section was the annexation portion.

Now you had another constitutional problem brought about by Home Rule and that problem lay with the Legislative Delegation exercising administrative authority in a number of counties, but it so happened that by virtue of house reapportionment in Horry County there were three resident members of Horry County's delegation living within the geographic bounds of Horry County and a fourth member of the House delegation that lived in Georgetown County, but his house district due to reapportionment represented technically about 7,500
people in Horry County. So some of those people that lived in Horry County got together and said that they were being taxed without representation because their legislative representative could not vote in Horry County on local issues because he lived in Georgetown and the law said he had to be a resident. Judge Morrison in the Georgetown-Horry Circuit said that was right and that it was unconstitutional.

They also challenged the 1974-75 Supply Bill of Horry County. Article I, Section 8 of the Constitution, which was not in any way altered by the Home Rule Amendment says that legislative, judicial and the executive power shall be separate and apart one from the other. Judge Morrison said you contravene the separation of powers doctrine when the legislative delegation steps in and begins administering and exercising executive powers and therefore that is a violation of the Constitution. But he refused to declare the Bill unconstitutional because of the ramifications it would have. The county would be virtually at a standstill without appropriations.

Now, there was also a Constitutional problem presented by Section 1 of the new Article VIII which says that you can maintain the authority that you have until the General Assembly implements the Home Rule Amendment by appropriate legislation, but you can only exercise those powers that were given as of the effective date of this Constitution. So the courts then had to decide whether everything that had been done since 1895, which was the effective date of this Constitution was a nullity or whether that language only took effect as of May 7, 1973, the date of the ratification of the new Article VIII. After citing numerous legal authorities they said they felt like that it was the intent of the framers of the Article and the will of the people that everything continue as it existed on May 7, 1973 — and not as it existed on December 6, 1895.

What we did by the Home Rule implementation statute was to set up five forms of government: one is a council form where the commissioners exercise all of the authority without a chief executive or administrative officer. Primarily this was for the benefit of some of the smaller counties who did not have the funds to hire a professional administrator or really did not feel that it was necessary. Then there is the council-manager form, the council-administrator form, the council-supervisor form — all basically the same forms of government. The last or fifth form is where the legislative delegation retains control of the purse strings which most of us feel is silly as well as unconstitutional. We had to do that to get a bill because of the urgency of the situation.

In that statute all of these powers are enumerated: the power to
tax, the power to set up special districts, to provide all of the services to the inhabitants of the county whether it be water service, garbage collection or what have you, as the local governing body deems necessary and appropriate. There is no provision for a transitional period to go from where you stand now or from where you stood on May 7, 1973, to where you have to go. So what the General Assembly did was say, "Okay, you have from the effective date of this act until July 1, 1976, to choose your form of government."

There is also the provision of single member districts within the county. What the legislature intended was, in my opinion, that single member districts or persons elected to serve on county councils come from a defined district in that county and that he be a resident of that district. In addition, the General Assembly under this act retains the right and the authority to set the terms of office for two or four year terms, and to define those districts and to select or mandate the number of such seats.

I anticipate numerous decisions by the Supreme Court further clarifying what the Constitution and the Legislature has attempted to do.