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Horace W. Fleming Jr.

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The Politics of Revised Article VIII:
Who Will Govern — And How?
by
HORACE W. FLEMING, JR.

Revised Article VIII is perhaps the single most important constitutional innovation in South Carolina's recent history. Implemented by the General Assembly in June 1975, it provides for uniform structures and powers of local government under the general laws, expands substantially the policy-making powers and service authority of counties, redefines the legal relationship of local governments to the General Assembly, and enhances the role of citizens in local decision-making.

My task is speculative and I shall try to anticipate certain of the main effects of the new law upon the "style" of local government and politics in South Carolina. By "style," I mean the manner in which issues are raised, considered, and legislated. This encompasses both formal and informal processes of decision-making, and the ways that individuals and groups in the private sector influence decisional outcomes.

The Old Style: Courthouse vs. Statehouse

Governmental powers in South Carolina are formally allocated among a "weak" executive, a moderately strong and assertive judiciary, and a legislature which traditionally has held "firm control of the critical sectors of state administration."1 Since Reconstruction days, county affairs in South Carolina have been controlled on a county-by-county basis by members of the local legislative delegations. Municipalities have been less subject to direct legislative control. Even though a county council or equivalent body existed in each county, the local delegations assumed ultimate responsibility for even the smallest details of county government administration. So great had the delegations' local influence become by the late 1940's that a proposal was introduced to authorize the delegations to enact county ordinances between ses-


*Assistant Professor, Political Science, Clemson University.
sions of the General Assembly. The proposal failed because some thought it bad form for the delegations to assert their local influence so openly and forcefully.

Following the decision of the U. S. Supreme Court in Reynolds vs. Sims, the State Senate was forced to reapportion and counties were discontinued as separate senatorial districts. Thereafter, some senators found themselves representing more than one county or parts of two or more counties, and this raised questions about the propriety of the delegations’ continued governance of the counties.

In the meantime, counties were beginning to experience serious strains on their service ability. They were confined to providing only services considered “ordinary” county functions as defined by 1895 standards. The General Assembly resorted to creation of special purpose districts to meet needs that these counties could not meet.

Federal revenue sharing in the late 1960’s increased the capacity of counties to finance expanded services, but still the counties lacked the necessary authority to provide additional services.

Matters came to a head in 1966 with establishment by the General Assembly of a twelve-member committee to consider revision of the State Constitution. Ultimately, their report provided the basis for revised Article VIII.

New Concepts: A Look at the Law

Although revised Article VIII has been called the “home rule” amendment and the law implementing it the “home rule” act, neither grant true home rule powers. At best, this article provides for greater local self-determination and choice in the making of policy, but within limits typical of those imposed on other localities in other states.

At present, there is considerable uncertainty over some of the provisions of revised Article VIII. Overlap and temporary legal disarray is almost inevitable where constitutional revision must be approached comprehensively so as to insure harmony between various provisions.

The lengthy debate and the delay in implementing revised Article VIII also attests to the problems which arise whenever those whose power is to be most directly affected – state legislators – are allowed to take the lead in constitutional revision.

2Ibid., p. 152.
3377 U. S. 533.
Despite its shortcomings, the new law is a step in the right direction. The counties are clearly the principal beneficiaries under revised Article VIII. Few major changes have been made in the structure and powers of municipal governments.

The New Style: Local Initiative and Responsibility

The net effect of the new law is to require greater initiative on the part of local officials and voters in determining what their particular local government needs are and more responsibility for providing for these needs.

By standardizing forms and powers, the new law places all local governments on an equal legal footing. As a result, greater flexibility is given all local governments in addressing problems, enacting ordinances, raising revenues, and undertaking services. It is still possible that the local legislative delegations will continue to dominate local decision-making, at least informally, but they are prohibited in principle from officially dictating the terms of local policy.

As a consequence of this shift of power and initiative from the statehouse to the courthouses, local officials will soon begin to feel increasing pressures in their roles. The era of the "part-time" mayor and council may be rapidly coming to an end. Moreover, the time may have passed when local officials could shift the blame for their own failures to Columbia.

The actions of all these officials are bound to take on increasingly "political" coloration as interest groups begin to shift some of their attention and efforts to influence to the local level where the benefits flowing from local government will now be allocated. Furthermore, as the Republican Party continues to gain strength in the local communities, we may see more vigorous party challenges as they covet the expanded powers and prerogatives of local elective office.

With the exception of the county board of commissioners form, each form of county government provides for a council to exercise major policy making authority. Constitutional officers in the counties remain subject to direct electoral control, except under the council-manager form which allows county council to opt by county ordinance for appointment of treasurer and auditor over election of these officials. Thus, leadership and accountability in the counties remain diffused among a large number of semiautonomous officials, and direction may still be lacking in planning and management.
Much has been made of the professional expertise component built into the council-administrator and council-manager forms of both county and municipal government — and rightfully so. Both provide for a professional to supervise increasingly complex budgeting, accounting, and planning activities. One feature of these forms that appeals to voters is that they "separate administration from politics," the implication being that the manager or administrator will stick to carrying out council directives and leave the hard political decisions to elected officials. However, this is an overly simplistic view of managers' and administrators' roles and of local politics generally. These officials must satisfy a mayor, a council, and the general public with their performance. They are on the firing line daily and directly. They must be sensitive to local politics.

An elected county supervisor may or may not bring to the task of governing the same qualifications as professional managers. Popular election is certainly no guarantee of governmental or managerial expertise. However, the county supervisor form is deeply engrained in our local government tradition. The main objection to this form is that it combines legislative and executive powers in a single office and makes the incumbent too powerful vis-a-vis county council. A great deal may depend upon the commitment of county council to measure up to the supervisor. No supervisor can really dominate county government if the council is unified and asserts itself aggressively.

Not unexpectedly, the least popular form of county government is the board of commissioners form. The board of commissioners, though popularly elected, will exercise no real legislative powers; the commissioners will merely recommend measures to their local delegations and the General Assembly and administer basic county functions. Less deference to the Local delegations, however, may be shown by the remainder of the General Assembly. The law allows the entire General Assembly to govern the counties subject to this form. The activities of passing local appropriations and enacting ordinances are not open to the same public scrutiny as county council actions under the other four forms.

The only significant change in our structure of municipal government under the new law is provision for the strong mayor plan. Whereas mayors in the past have occasionally acted like strong mayors, this has been due mainly to force of personality and abilities to personally influence council. Now the mayor has sufficient statutory authority to hire and fire, to directly supervise city departments, to preside at council meetings and vote as other councilmen, and to prepare the city
budget. The office of mayor will be demanding, regardless of the size of municipality, due to the scope of his duties and responsibilities.

**Manner of Electing Councils.** The law provides that counties may choose councilmen either from single-member districts or at-large; no combination of the two methods is authorized. Municipalities may elect their councilmen from single-member districts, at-large, or by means of a combination of the two.

Just how the at-large plan will fare in court and on review by the U. S. Department of Justice is open to question, and has been speculated upon in several of the other papers.

Municipalities are allowed under the law to provide, by local ordinance, for non-partisan elections. But here, again, we face the prospects of heightened partisan sympathies among voters as the Republican Party increases its activity.

**Expanded County Service Role.** In enlarging the service role and authority of counties, the General Assembly has conformed to a trend noticeable nationwide. Fifteen states have recently authorized home rule for their counties; several others have granted their counties additional flexibility of form, function, and financial management.\(^4\)

South Carolina counties now may provide a number of municipal-type services, grant franchises and license businesses. Details have been provided in several of the papers.

Stringent requirements on creation of special tax districts stem mainly from the failure of the General Assembly to pass an adequate annexation law. It was felt that a proliferation of special tax districts around the boundaries of municipalities could preempt reasonable annexation by these municipalities and complicate service delivery and control of growth, thus adversely affecting all concerned. The fight over annexation promises to be protracted, involving seemingly irreconcilable differences mainly between the private power companies and the electric cooperatives, with the stakes quite high for both.

One other note of caution: within the next year, the General Assembly will take up consideration of a new Article X on the subject of finance and taxation. Within the body of that article, the Assembly presumable will place specific limits on the bonded debt of local governments and establish uniform property tax rates and assessment ratios. In

so doing the General Assembly could deny to the counties the fiscal flexibility they need to effect their new service role.

Communities desiring to incorporate must now submit to the Secretary of State an approved *service feasibility study* prior to the granting of a charter of incorporation. This should insure that new municipalities are capable of providing acceptable levels of services their residents will require prior to incorporating.

**Formalized Budgeting and Centralized Purchasing.** Following specified procedures for budgeting will aid in analyzing benefits of dollars expended and in planning for future needs. A budget is the principal planning tool at all levels of government, even though some smaller towns in South Carolina have never really used it for this purpose.

*Counties* are required to develop a system of centralized purchasing whereby one individual or agency is designated to handle purchases of all supplies and equipment for the county government. Vast savings are possible through bulk purchases, provided persons with the requisite expertise are located to handle this task. Savings make tax cuts possible. Tax cuts figure prominently in voters' decisions at the polls. And both are important indicators to the general public of government efficiency.

**Interlocal Agreements.** One other method of saving money and eliminating waste is through interlocal agreements, i.e. agreements between and among cities and counties for *joint* provision of services. The new law *facilitates* the making of such agreements on the initiative of *local officials*. Tax administration is a *function* that typically overlaps city and county and one that lends itself to managerial economizing through interlocal agreements. Numerous *services* obviously can be provided more efficiently and cost-effectively on a joint basis: health and medical care, recreation, emergency medical service, sanitation, fire protection, law enforcement, and the like.

**Interest Group Activity.** The two most active and involved groups have been the South Carolina Association of Counties and the South Carolina Municipal Association. Their recommendations to the General Assembly on the forms and powers of local governments were largely adopted, with some compromise. On the whole, these two groups have worked effectively and amicably together, a fact that is somewhat surprising given the large gains in service authority conferred on counties at the seeming expense of the municipalities.

More compromise will be necessary as the General Assembly takes up the matter of annexation. The electric cooperatives claim that they
stand to lose most under a new annexation law if that statute should allow counties and cities individually to assign territories to utility companies. They favor retention of territorial assignment powers by the Public Service Commission, while the private power suppliers prefer assignment of territories by the local governments. The cooperatives believe that local government assignment of territories would make it impossible for them to plan and develop a stable service delivery system based on sound financial and management practices. The private companies point out that they are more flexible than the cooperatives, can therefore serve local needs more efficiently, and will pour substantially greater revenue back into the local governments because of the business license taxes which they — unlike the cooperatives — are required to pay.

The League of Women Voters has been the most active of all other public interest groups, followed closely by local taxpayers' and property owners' associations. As amendments to the home rule law are offered, the contest will be heightened between the large counties and small counties, counties and cities, public and private utility companies, and last, but certainly not least, between the so-called "old guard" in the General Assembly and some of the younger, more reform-oriented lawmakers.