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Final Report of the  
MUNICIPAL LAWS REVIEW STUDY COMMITTEE  
to the  
SIXTY-FOURTH GENERAL ASSEMBLY  
of the  
STATE OF IOWA

Submitted January, 1971

MUNICIPAL LAWS REVIEW STUDY COMMITTEE  
Report to the Sixty-fourth General Assembly

I. Committee and Subcommittee organization, membership, and chairmen.

The twelve-member Committee, including seven legislative members and five nonlegislative members, has been functioning since its organizational meeting on August 11, 1969. Former Representative Stanley T. Shepherd resigned from the legislature in September of 1970 and the remaining eleven Committee members have completed the Committee's work.

Senator Ralph W. Potter has served as Chairman of the Committee and much of the Committee's work has been conducted through Subcommittees appointed by the Chairman. The Subcommittees and their membership are as follows:

Organization Subcommittee:

Senator Potter, Chairman  
Mayor Chester Lee of Clarinda  
Mr. Philip T. Riley, City  
Attorney of Des Moines

Facilities Subcommittee:

Senator John W. Walsh, Chairman  
Representative Shepherd  
Councilman Howard Bell of Ames

Streets and Transportation  
Subcommittee:

Representative William H. Huff  
III, Chairman  
Representative Ed Skinner  
Mayor Harold Gartner of Titonka  
Mr. Philip T. Riley and Professor Robert J. Martineau were appointed to this Subcommittee in October, 1970, to facilitate work on bonding laws.

Utilities and Housing  
Subcommittee:

Representative Nathan Sorg,  
Chairman  
Senator Alan Shirley  
Mayor Loren Hickerson of Iowa  
City

Finance Subcommittee:

Members of the Facilities and  
Utilities Subcommittees with  
Councilman Howard Bell serving  
as Chairman.

II. Committee definition of home rule power.

Basic to the Municipal Laws Review Study Committee's work has been its concept of the meaning of "home rule" -- that

a city has all power related to local government except taxing power, unless the General Assembly limits a city power or prescribes a specific procedure to be used in the exercise of a city power.

Following is an excerpt of the minutes of the Committee's second meeting, on September 3, 1969, describing the Committee's unanimous approval of this concept:

"Representative Skinner stated that the Committee should adopt a definition for home rule before any revision is begun. To facilitate this point, he moved that the Committee define home rule to mean that cities and towns may exercise any powers that are not limited by the General Assembly through the enactment or retention of law setting guidelines for or limiting the powers of cities and towns. Representative Shepherd seconded the motion. Following discussion, the motion was adopted unanimously."

### III. Chapters of Title XV to be repealed, or retained.

A. Recommendation that subsequent general assemblies study and revise chapter 365, and chapters 410, 411, and 412.

Because of its concept of the meaning of home rule, the Committee concluded that a large portion of present Title XV of the Code is no longer useful and, in fact, acts as a restriction upon a city's exercise of home rule power. Therefore, the proposed municipal code will replace Title XV, with the exception of certain chapters. These chapters relate to areas of law which the Committee feels require state regulation, and which are so complex that they require further and more intensive study before revision.

The Committee particularly recommends that subsequent sessions of the General Assembly study and revise chapter 365, relating to civil service, and chapters 410, 411, and 412, relating to public employee retirement systems, as these chapters have been described by city officials as being areas of the law which are badly in need of revision and modernization.

The chapters of Title XV of the Code which will remain nearly unchanged if the proposed City Code of Iowa is adopted are as follows:

Chapter 365	Civil service.
Chapter 367	Mayors' and police courts.
Chapter 403	Urban renewal.
Chapter 403A	Low-rent housing.
Chapter 406	Sanitary disposal projects.
Chapter 409	Plats.
Chapters 410, 411, and 412	Public employee retirement systems.
Chapter 414	Municipal zoning.
Chapter 419	Support of industrial projects.
Parts of chapter 420	Special charter cities.

IV. Expansion of home rule philosophy.

A. No specific grants of power in areas covered by home rule grant.

B. Proposed Code, and the chapters remaining in Title XV, are primarily limitations on home rule powers, in areas where state control was considered necessary or desirable.

C. Coordinating amendments also remove specific grants.

Several important considerations developed from the Committee's concept of home rule, and form a basis for all divisions of the proposed City Code of Iowa. Since the Committee believes that cities have home rule under the Constitution, the proposed Code does not grant powers, except in a broad general way, but states the limits upon home rule power. The chapters remaining in Title XV are also limits upon a city's power. These limits arise in areas where this Committee and former legislatures have found statewide uniformity and control necessary or desirable.

In addition to the Divisions of the City Code of Iowa, the Committee's proposal includes many amendments to other sections of the Code outside of Title XV, in order to coordinate these scattered sections to the proposed City Code and to the home rule amendment. In order to make some Code sections consistent with home rule, the amendments sometimes eliminate a specific grant of power to cities, when the power is considered to be a home rule power, and when the specific language of the present Code could serve as a limitation upon home rule power.

V. Removal of distinction between "city" and "town", and removal of other restrictions based upon population.

The Committee feels that it is generally not desirable for the state to impose restrictions on certain cities based upon their population, but rather believes that each city may decide, based upon practical and local considerations, what services and facilities it should undertake to provide. For this reason, most restrictions in the present Code based upon population have been removed and even the distinction between a city and town, based upon the 2,000 population limit, has been removed. The word "city" is used to mean a city or town of any size.

VI. No necessity for sudden changes in city administration.

The Committee also agrees that no city should be obliged to make immediate major changes in its operation as a result of the enactment of this proposed City Code. On the other hand, if home rule is to have meaning, a city should be able to make changes which seem appropriate to its governing body or its citizens. For these reasons, the present optional forms of city government are retained, as well as authority for a city to move to a home rule charter, and present agencies and procedures of city government may be continued or may be altered as provided.

VII. Transition period, when city may elect to come under provisions of new City Code.

Although the Committee is in complete agreement as to the meaning of the home rule amendment and the necessity for legislation of the type proposed to implement it, the constitutional implications of removing specific grants of power from the state to the cities convinced the Committee, upon the advice of the bond counsel who worked actively with the Committee, that a transition period should be included in the proposal. Therefore, a section provides a two-year period during which cities may choose to function under the new "City Code of Iowa", obtaining court tests of their authority under the new law, as necessary, or may continue to function under present law. Thus, if any portion of the new law is declared invalid, the legislature will be able to correct the new law before the present law is finally repealed.

VIII. Model ordinances to be prepared by League of Iowa Municipalities.

The League of Iowa Municipalities has assured the Committee that it will be prepared, when this proposed City Code is enacted, to make available model ordinances which will aid a city in the exercise of its home rule powers under the new law.

IX. Committee meetings.

A. Meetings with special charter cities, bond counsel, financial officers of cities, and representatives of city utilities, libraries, and hospitals.

Early in 1970 the Legislative Service Bureau began to prepare drafts of proposed Divisions for the City Code. The Subcommittees had previously studied all present Code sections relating to cities and towns, and had made initial recommendations for each proposed Division. On April 28, shortly after the work of the Sixty-third General Assembly was completed, the Committee met and embarked upon a series of frequent, intensive Subcommittee and full Committee meetings to study, draft, review, and redraft each Division of the proposed Code. Included were meetings with representatives of the special charter cities, in Davenport, Iowa, meetings with bond attorneys and financial advisors, city administrative and finance officers, representatives of municipal utilities, libraries, and hospitals, and other interested persons.

X. Appointment of Professor Robert J. Martineau as special consultant.

In June, 1970, Professor Robert J. Martineau, College of Law, University of Iowa, Iowa City, was appointed a special consultant to the Committee. Professor Martineau has attended many Committee and Subcommittee meetings and given invaluable assistance in the drafting and reviewing processes.

XI. Acknowledgement to others who assisted Committee.

Others who have been consistently helpful are Mr. Robert E. Hays and Mr. Edwin H. Allen, Jr., of the League of Iowa Municipalities, and Mr. L. A. "Pat" Touchae, of the Iowa Association of Municipal Utilities.

Mrs. JoAnn Brown, Legal Counsel, Legislative Service Bureau, has served full time as staff assistant to the Committee from April through November, 1970, with the assistance of Mr. Paul Vos, a researcher and law student from Drake University, throughout the summer months, and Mrs. Sandra Githens, as Committee secretary.

XII. Committee hearings, with city attorneys, and with city officials and legislators.

In late August and September the work of the Committee to date culminated in a series of hearings throughout the state at which the Proposed City Code of Iowa, tentatively approved by the Committee for the purpose of the hearings, was presented to city officials, legislators, and other interested persons.

Committee member Mr. Philip T. Riley, with the assistance of Mr. William Sueppel, Attorney from Iowa City, after sending invitations to nearly five hundred city attorneys throughout the state, met with these officials in four meetings conducted August 20 through August 26 at Fairfield, Red Oak, Waterloo, and Storm Lake. The full Committee then conducted a series of five hearings, at the same four cities and finally at Des Moines in connection with the annual meeting of the League of Iowa Municipalities. These hearings were arranged and city officials were invited by the League. Invitations were also extended to all legislators and candidates for the legislature.

The hearings were well attended and many valuable suggestions were made to the Committee members and taken under advisement by them. Since then the Committee has been engaged in studying all criticisms and suggestions and making the many decisions necessary before a final draft of the proposed City Code is to be presented to the 1971 General Assembly.

XIII. Committee's work with bond counsel.

The entire area of municipal bonding powers and restrictions has caused the Committee considerable difficulty. Early in the Committee's work, the area of bonding law was assigned to the Streets and Transportation Subcommittee, and the Chairman of the Subcommittee, Representative Huff, called upon bond counsel who serve Iowa cities to work with the Committee in an attempt to draft one simplified body of bonding law to replace the many sections relating to bonding now proliferated throughout the Code, including Title XV. The Subcommittee members and the full Committee have met many times with bonding attorneys and financial consultants from Des Moines and Chicago. In November, 1970, the Committee received fairly complete tentative drafts which provide a

single method for issuing each major type of municipal bond, including general obligation, revenue, and special assessment bonds, as well as a single procedure for making special assessments, for contract letting, and for joint authorities to manage and finance certain utility projects.

The following persons submitted and reviewed drafts for Parts 3 through 7 of Division VII of the City Code of Iowa:

Mr. Philip J. Dorweiler,  
Mr. Kenneth Haynie, and  
Mr. Charles Carlson, all of the firm of  
Ahlers, Cooney, Dorweiler, Allbee & Haynie, Des Moines,  
Iowa.

Mr. Robert H. Helmick, and  
Mr. Edgar H. Bittle, of the firm of  
Herrick, Langdon, Belin & Harris, Des Moines, Iowa.

Mr. Lyman Mitchell, and  
Mr. Lee A. Boye, of the firm of  
Chapman and Cutler, Chicago, Illinois.

XIV. Committee minutes and drafts available in Legislative Service Bureau office.

All Committee and Subcommittee minutes, including all drafts proposed to the Committee, are available for reference in the Legislative Service Bureau offices.

XV. Description of Committee's proposed legislation.

A. City Code of Iowa in nine Divisions.

B. Coordinating amendments.

C. Separate Bills to amend chapter 57, relating to election contests for bond elections; chapter 75, relating to sale of bonds; and chapter 76, relating to place of payment of bonds.

The proposed City Code of Iowa, which is the basic legislation recommended by the Committee, consists of nine Divisions. Following this major portion of the Bill are sections which repeal a substantial part of Title XV of the Code, and many coordinating amendments to parts of the Code. In addition, on the advice of bond counsel, the Committee is recommending three separate amendments to the Code, one to chapter 57, relating to election contests, and providing a procedure for contest of an election on a bond issue, two to chapter 75, relating to sale of bonds, and providing bid procedures and maximum interest rate of seven percent, and one to chapter 76, relating to place of payment of bonds.

XVI. Summary of proposed City Code of Iowa.

A. Division I. Definitions and General Provisions.

1. Definitions, especially definition of "city".
2. Standards for notice and publication, and petitions.
3. Conflict of interest, and other general provisions.
4. Separability clause and transition period.

Words used repeatedly in the proposed City Code are defined in this section. "City" is defined to mean a municipal corporation including a town, but not including a county, township, school district, or any special purpose district or authority. It will no longer be necessary to refer to "cities and towns" throughout the Code, although any remaining references to towns are not harmful, as a town is also a city, under this definition.

This Division also includes standards for notice and publication, and for petitions by voters, which are referred to throughout the other eight Divisions. Conflict of interest provisions, as contained in the present law, are included in this Division.

The final sections of Division I include a separability clause and a provision for a two-year transition period during which cities may elect to come under the new law, or continue to function under present law.

B. Division II. Powers and Duties of Cities.

1. Broad grant of power.
2. Specific limitations.
3. Powers relating to railroads.
4. Duties of city.
5. Duties of property owners.

A city's constitutional home rule power is described in broad, general terms in the first sections of this Division. No specific powers are listed, because such a listing might be construed as a limitation upon cities. Instead, certain limits are listed, and in general effect the remainder of the proposed Code is also a series of limitations upon the general powers of a city under home rule. This Division indicates that when the state has established limits on conduct, such as those related to health and traffic safety, a city may make the limits more restrictive within its jurisdiction, but not less restrictive, and that state procedures are to be substantially followed by a city in the exercise of its powers, where applicable state procedures are given.

Also included are provisions relating to a city's extraterritorial jurisdiction, authority for joint action, and limits on disposing of an interest in real property.

In this Division, present city powers to require railroads to provide crossing constructions and safety devices are stated. The city's duties in relation to city property, and its powers to require abatement of nuisance and to require other actions by property owners, are listed in this Division. These provisions are similar to present law.

C. Division III. City Development.

1. Philosophy of Division and creation of city development board.
2. Provisions for name change, nonannexation agreements, and voluntary annexation.

In order to permit better long-range planning and orderly development in the interest of all cities, a city development board is created in this Division to study and rule upon petitions and plans for incorporation of new cities, discontinuance or consolidation of cities, and annexation or severance of territory. The board is a state agency which meets with local representatives from the cities and territories involved to determine if proposals are in the public interest. Proposals approved are still subject to election. This concept, while not in the present Code, is a part of Suggested State Legislation proposed by the Advisory Commission on Intergovernmental Relations, and similar legislation was introduced in a recent session of the General Assembly.

This Division also includes, under General Provisions, procedures for a city to change its name, for cities to agree not to annex specific territory, and for annexation on application of all owners of a territory.

D. Division IV. Organization of City Government.

1. Retention of present optional forms.
2. Addition of home rule charter form.
3. Retention of provisions relating to special charter cities.
4. Powers of council and mayor.

The present optional forms of city government are described in this Division, including mayor-council, commission, and council-manager forms. Only very minor changes were made in any of these forms, but much repetitious or ambiguous language

was removed. In addition, a city is provided the option of adopting a home rule charter to control its form of government. The home rule charter may be proposed by the council, or on petition of the voters a charter commission shall be established. A city may not change its form of government more often than once in six years.

The Committee has sought the assistance of Iowa's four special charter cities in drafting proposals to enable them to continue under their present form of government, and substantial parts of chapter 420 of the Code will be retained for the use of special charter cities only.

This Division also includes a description of the major powers and duties of the council and mayor in all cities.

#### E. Division V. City Elections.

1. Similar to present law, with provisions for nonpartisan primaries and run-off elections.

Since most of the general election law of the state is applicable to city elections, this Division is brief and spells out those provisions which are especially applicable only to city elections. Procedures for a nonpartisan primary or a run-off election in lieu of a primary are included, as well as procedures for determining those elected from a slate of council candidates who run at large.

#### F. Division VI. City Legislation.

1. Similar to present law.
2. Requirement for adoption of city code at least once every five years.

Legislative measures of a city, including ordinances, amendments to ordinances, resolutions, motions, and city codes are the subject of this Division. The measures are defined in Division I, and methods of adoption are prescribed here. In addition, a city is required to compile and adopt a city code, which includes nearly all ordinances in effect, at least once in five years. However, the city code need not be published in bound volumes. The requirement is only that it be compiled in a form accessible to the citizens. A city is also permitted to adopt other codes, such as a standard building code, by reference.

#### G. Division VII. City Finance.

1. Taxes and funds.
  - a. Committee philosophy to retain present law relating to taxation.

b. Committee recommendations:

- (1) That separate additional mill levies be combined in one grant.
- (2) That one-eighth mill levy limit on aid to public transit be increased.
- (3) That limit on levy for agricultural land within cities be increased to limit on similar land outside of cities.

c. Based on "Dubuque Study".

d. Elimination of seven functional funds, and combination into general fund.

e. Retention of debt service, trust and agency, and emergency funds.

f. Addition of capital improvement reserve fund.

In the area of taxation, the Committee has adopted a policy of maintaining the present law, except for simplification and rearrangement. This does not mean that the Committee opposes a change in current tax law applicable to cities and towns, but rather, is based upon the Committee's belief that the area of taxation was perhaps not encompassed within its charge to implement home rule, and the fact that another study committee has extensively studied the entire field of taxation. The Committee originally recommended that agricultural land within a city be taxed to the same extent as if it were outside the city, but later decided to leave the present one and one-half mill limit on agricultural land within a city, in line with the philosophy of maintaining present tax law. The separate mill levies itemized in Part 1 of Division VII were considered outside the thirty mill limit on cities and towns, either because the law states that they are not subject to any limitation, because they can be levied only after an election, or because they were not listed in chapter 404 of the Code as alternate levies. The Committee believes that these specific levies should be replaced with a single authorization for exceeding the thirty mill limit by a limited amount upon vote of the people. Particularly, the Committee feels that the limit of one-eighth mill for aid to a public transportation company is undesirably low, in view of modern needs for mass transit.

A study of municipal financing, commonly called the "Dubuque Study", and conducted by Baxter-McDonald Company under the combined sponsorship of the City of Dubuque, the League of Iowa Municipalities, and the Office for Planning and Programming, has been the basis for most of the changes made in city budgeting and accounting procedures by this proposal. The Dubuque Study recommends that the seven functional funds be eliminated and their functions combined into the general fund. This recommendation has been incorporated into Division VII. Other funds required or

authorized under the present Code, such as debt service, trust and agency, and emergency funds, are retained.

An innovation in city funds is the capital improvements reserve fund, which is limited to an annual levy of two and one-half mills for a specific time and purpose. If the combined levy for the general fund and capital improvements reserve fund will exceed thirty mills, the question of establishment of the reserve fund must be submitted to the voters. The Committee believes that such a fund will be a saving to the property taxpayer, because it will eliminate the need to issue bonds and pay high interest rates for some necessary capital improvements.

2. Part 2. Budgeting and Accounting.

- a. Program-performance budgeting and accounting.
- b. Establishment of city finance committee under state comptroller's office, with representation of city officials.
- c. City budget processes in this Division rather than in chapter 24 of the Code.

Other recommendations of the Dubuque Study are incorporated in Part 2 of Division VII. The Study urged that all cities move to a program-performance type of budgeting, and prepare an operating budget for three years and a capital improvement plan for five years. While conceding the desirability of such provisions, the Committee feels that it is impractical to make such changes an immediate requirement, and so provided for the establishment of a state-level city finance committee, with broad representation of city officials knowledgeable in city accounting, to assist cities to move gradually toward these desirable goals. The city finance committee will be under the state comptroller's office, and will establish guidelines to permit transfers of city moneys between or within programs and funds, although major transfers will require a budget amendment process. The committee will hear budget protests. Since these procedures are different to some extent from the present budget process, cities will not be covered by Chapter 24 of the Code if this proposal is adopted.

3. Part 3. General Obligation Bonds.

- a. Essential corporate purpose.
- b. General corporate purpose with reverse referendum.

Part 3 of this Division controls general obligation bonds issued by a city. General obligation bonds are divided into "essential corporate purpose" bonds and "general corporate purpose" bonds. Bonds for an essential corporate purpose may be issued without an election, while bonds for a general corporate purpose have a "reverse referendum" procedure, whereby the city

publishes notice of intent to issue the bonds, and voters may petition for an election. Those purposes listed as "essential" are similar to the purposes for which bonds may be issued without an election under present law.

4. Part 4. Special Assessments.

- a. Assessment procedures and bonding procedures.
- b. Combines 391, 391A, and 417 of the Code.

Part 4 provides procedures for special assessments and special assessment bonds. This Part is a compilation and revision prepared by the bond counsel, of present law as contained primarily in chapters 391, 391A, and 417 of the Code.

5. Part 5. Revenue Financing.

- a. For city utilities, combined city utilities, city enterprises, and combined city enterprises.

Part 5 provides procedures for revenue bond financing and use of pledge orders by a city utility, combined city utility, city enterprise, or combined city enterprise.

6. Part 6. Contract Letting Procedure.

- a. Contracts over \$10,000.
- b. Emergency provisions.

Part 6 contains procedures regulating contracts for amounts over ten thousand dollars, with a special provision for emergencies.

7. Part 7. Joint Exercise of Powers.

- a. Formation of a public authority under chapter 28E of the Code.
- b. Application to certain city utilities.

Part 7 provides for establishment of a public authority, under chapter 28E of the Code, to provide financing for certain city utility projects. Included are provisions for joint financing of electric light and power plants, gasworks, waterworks, and combined utility systems.

H. Division VIII. City Utilities.

1. Combines present chapters 397, 398, 398A, and 399 into one.
2. Establishment or discontinuance of a city utility, or combined city utility, and formation or dissolu-

tion of a board of trustees, subject to approval of voters.

3. Powers of utility boards.

The city utilities Division is based upon four present Code chapters which regulate public utilities and utility boards of trustees. This Division requires the question of the original establishment or discontinuance of a city utility, or combined utility system, or the formation or dissolution of a board to administer a city utility, to be submitted to the voters. If a utility board is established it has all powers of a city relating to the administration of the utility, with the exception of taxing and bonding powers, and the power to hold title to real property. The board is also required to make complete reports to the council. It will be permitted to issue revenue bonds under the provisions of Part 5 of Division VII. Presently functioning utility boards may continue to function with the added powers in this Division, unless dissolved by the voters.

I. Division IX. Administrative Agencies of Cities.

1. Combination of over ten present Code chapters.
2. Exclusion of city utilities, zoning commissions, boards of adjustment, and others controlled by state law.
3. Protection for existing library and hospital boards.
4. Powers and limitations of cities in delegating powers to administrative agencies.

All agencies established by a city except those to administer city utilities, zoning commissions, and boards of adjustment, or others which may be separately controlled by state law, are subject to the provisions of this Division. These provisions replace over ten chapters of present law. Generally, it provides that the council may establish or dissolve agencies, and designate their powers and duties, as needed. However, some protections for present library and hospital boards are included. The Committee feels that this approach is in accordance with home rule concepts, and permits each city flexibility to establish agencies which are desirable, and which are not insulated by state law from control by the citizens of the city, through their elected representatives. However, the council may not delegate to an administrative agency certain powers relating to revenue bond financing. As in the case of municipal utilities boards, present administrative agencies may continue to function until altered as provided in this Division.