

F I N A L R E P O R T  
COUNTY HOME RULE STUDY COMMITTEE

February, 1981

The County Home Rule Study Committee was created pursuant to Senate Joint Resolution 9 which was adopted during the 1979 Session of the Sixty-eighth General Assembly. The Committee has twelve members, three members of the House County Government Committee appointed by the Speaker of the House, three members of the Senate County Government Committee appointed by the Lieutenant Governor, one member of the Legislative Council appointed by the Legislative Council, and four county officials and one citizen appointed by the Governor. The members of the Committee are as follows:

Senator James E. Briles, Co-chairperson  
Representative Arlyn E. Danker, Co-chairperson  
Senator Charles P. Miller  
Senator John N. Nystrom  
Representative Donald H. Binneboese  
Representative Clifford Branstad  
Representative John H. Clark, Council member  
Mr. Jack W. Dooley, County Attorney, Johnson County  
Ms. Marjorie E. Karns, County Supervisor, Cass County  
Mr. Donald J. Diwocky, Clerk of the District Court,  
Pottawattamie County  
Mr. G. Richard Burr, County Supervisor, Buena Vista County  
Mr. Fred W. Nolting, Citizen member, Black Hawk County

As noted in its December, 1979, report, the Committee first decided to proceed with a consolidation and clarification of current laws relating to counties without substantially changing the scope, powers, or duties of the county or its officers. Throughout the 1980 interim the Committee and staff proceeded with this effort, producing drafts relating to the organization, powers, and duties of the board of supervisors and of the various county officers.

The Committee deferred action on county finances for some time, hoping that the recently established County Finance Committee would have recommendations for consolidating county funds, and other financial recommendations which could be incorporated into the Study Committee's bill draft. However, the Study Committee later decided to consolidate and coordinate the county laws relating to finances without proposing major changes.

Two local firms of bond counsel assisted the Committee in drafting uniform procedural provisions for general obligation and revenue bonds for counties, which are based upon the provisions adopted for cities, but which are generally limited to the purposes authorized for counties under present law.

The Code chapters which relate to various special districts, and the provisions which provide for special assessment bonds, generally in connection with the special districts, while closely related to county government, were not considered at this time in drafting the county home rule bill, because they do not apply to the county generally, are extremely complex, and are probably not subject to home rule.

In order to implement home rule, the Study Committee determined during the 1980 interim to eliminate from the Code many permissive sections relating to powers of the board of supervisors, so that these powers could be exercised without limitation under county home rule. The corresponding amendments prepared for the powers and duties of the board of supervisors thus include the repeal of numerous permissive statements which are not rewritten in the final bill draft.

To further implement home rule by clarifying the General Assembly's intent in certain areas, certain provisions in the Code for cities were redrafted for application to counties. These include general statements of the extent of home rule which is "not inconsistent with the laws of the General Assembly", procedural sections for county legislation, contract letting for public improvements, conflicts of interest, and county penalties.

In addition, many chapters of the Code relating to counties are repealed and rewritten in the bill, to shorten, simplify and clarify the laws. The major chapters repealed and rewritten are chapters 331, 332, 333, 334, 335, 336, 336A, 336B, 337, 337A, 338, 339, 340, 340A, 341, 342, 343, and 606.

Since many of the powers and duties of the board and other county officers are scattered throughout the Code in sections which cannot conveniently be moved to the part of the Code which relates primarily to counties, the bill draft also includes lists referring to these scattered Code sections. The Committee's goal is to provide for county officers and citizens a convenient reference to areas of law which affect counties.

During the course of the study, the Committee discussed some problems which were not resolved. The Committee concluded that additional study was needed or that the problem was not within the Committee's jurisdiction. As a result, the Committee makes the following recommendations:

1. That the Committees on Judiciary and Law Enforcement review the doctrine of sovereign immunity as it relates to county government and the feasibility of imposing liability limitations.

2. That the Committees on State Government devise a method of providing an annual update of voter registration lists to remove deceased persons and persons who no longer reside in a voting precinct.

3. That the Standing Committees on Transportation devise a method to update drivers' license lists annually to remove persons who are no longer eligible for selection as jurors and for other government purposes.

4. That the Standing Committees on County Government consider legislation to provide that township financial records be audited at the same time as county financial records.

5. That the Committees on Ways and Means consider legislation to increase the current levy of six and three-fourths cents per thousand dollars of assessed value for the acquisition and maintenance of a sanitary disposal project to thirteen and one-half cents per thousand dollars of assessed value.

The bill proposed by the Study Committee is planned and numbered to be codified as one chapter with various divisions and parts of divisions, and with numbers reserved for the insertion of additional material later, if needed.

A summary of the bill follows.

Division I, Definitions, section 100. The definitions apply to all areas of the bill except the corresponding amendments. The definitions of the county officers, 1 through 8, are consistent with current law. The definitions of measure, ordinance, amendment, resolution, and recorded vote are adapted from the city code. State law is defined to include administrative rules.

Division II, Organization of the Board of Supervisors, sections 200 through 216. This division is a recodification of chapter 331. Uniform petition requirements are provided and these requirements are the same as provided in sections 331.2 and 331.3. The provisions relating to the supervisor representation plans are unchanged. A substantive change has been made relating to the meetings and meeting dates of the board. The distinction between regular and special meetings is removed. The only meeting date specified is the first meeting of the year. The other meetings are to be scheduled and conducted as provided in chapter 28A, the open meetings law. Section 331.19 relating to books kept by the board is transferred to division III and sections 331.20 and 331.21 relating to claims are transferred to division V, relating to the county auditor. Also the authority of a supervisor to serve concurrently as a member of an appointive board, commission, or committee of the state or a political subdivision is expanded to include membership on a nonprofit corporation or agency which receives county funds.

Division III, Powers and Duties of a County, sections 300 through 305. Part 1, General Powers and Duties, sections 300 through 382. These sections relate to the county in general and the county board of supervisors. Most of the statements in section 300 have been adapted from the city code. They describe the extent

of home rule and its relationship to the statutes. The next section, 301, county legislation, is also adapted from the city code. It establishes procedures for counties to legislate by ordinance, amendment, or resolution, and requires that ordinances be compiled at least every five years. These provisions are new for counties. The next two sections compile the general duties, powers, and limitations for the county board, from chapter 332 and other parts of the Code. The main change is in the fact that many of the permissive sections in the Code, which were needed to enable counties to act prior to home rule, have been dropped because they tend to serve as limitations upon the county's home rule powers. Other changes include the transfer of the responsibility for the highway and bridge record books to the county engineer, some variation in the limitations upon a county building code, and a broadening of the county's condemnation powers to be equivalent to those of cities. Sections 304 and 305 provide standards for publication of notices and petitions of the voters. These sections are frequently referred to in the bill.

Division III, Part 2, Duties and Powers of the Board Relating to County and Township Officers and Employees, sections 320 through 323. The first section lists all appointment powers of the board, compiled from all parts of the Code. The next three sections compile the duties and powers of the board which relate directly to county officers, and to other county employees. Because of the status of elected county officers, it was felt that the board cannot exercise unlimited home rule power in their prescribed areas; therefore permissive statements in regard to officers were not eliminated.

Division III, Part 3, Duties and Powers of the Board Relating to County Contracts, sections 340 and 341. Section 340 adapts the contract bid requirements from the city code to counties by adopting sections 384.95 through 384.103 by reference after adjusting the language to fit counties. Because of the adoption of this provision and new bonding provisions, counties will no longer be subject to chapter 23. Contracts for which payment may be made from the secondary road fund are excluded from this general provision and remain subject to the requirements of the present Code. Section 341 is a conflict of interest section which is also adapted from the city code.

Division III, Part 4, Duties and Powers of the Board Relating to County Property, sections 360 and 361. It is assumed that counties have the power to deal with county property generally under home rule. However, certain limitations on that power and duties relating to county property are gathered in section 360. Section 361 describes the county's powers relating to secondary roads and traffic, which are not changed from the present Code.

Division III, Part 5, Duties and Powers of the Board Relating to County Services, sections 380 through 382. The duties to provide certain services are not changed from the present Code, but are

compiled here for reference purposes. In some cases in the area of services, it is difficult to determine under the Code whether a county has any home rule power or whether the state has preempted the area. Some of these are listed in section 331 following a statement that the counties are free to follow the sections and chapters referred to, or to exercise the same or similar powers under home rule. Section 382 is a reference to the various powers and duties of the board relating to elections, under the present Code.

Division IV, Powers and Duties of the Board Relating to County Finances, sections 400 through 470. Part 1, General Financial Powers and Duties, sections 400 and 401, provides a compilation of miscellaneous financial powers and duties found in the Code. Although it is believed that the County Finance Committee will recommend changes in county budgeting in the future, this bill leaves the counties subject to chapter 24 and other existing Code sections in relation to finances.

Division IV, Part 2, County Levies and Funds, sections 420 through 427. This part assembles all of the references to county levies and funds which were found in the Code and categorizes them as mandatory or permissive levies and funds. Sections 421 and 422 include the present levy limitations, followed by permission to exceed certain levies upon vote of the people, which was given to the counties in 1980 legislation. Only the levies under the board's control are listed. Its duty to levy taxes certified to it by other bodies is covered under the general financial duties. Section 423 establishes the general fund and lists the various deposits to and disbursements from the general fund authorized in present law, along with a new statement to the effect that moneys not earmarked for another fund shall be handled in the general fund. Sections 424 and 425 compile the mandatory and permissive county funds. Section 426 covers the county indemnification fund, a state fund to which the counties contribute. Section 427 is the only new fund, a debt service fund, which replaces various provisions which require that taxes to service bonded obligations be levied and segregated from other county moneys.

Division IV, Part 3, General Obligation Bonds, sections 440 through 448. The consolidated provisions on general obligation bonds and revenue bonds replace many separate sections in the present Code which authorize county bonds for various purposes and provide varying procedures. The new provisions keep the same basic purposes, but provide uniform procedures for issuing bonds. The bond sections were drafted with the assistance of bond counsel. They are based on those in the city code, rewritten and adapted for counties. General obligation bonds are divided into "essential county purpose" bonds which may be issued without an election, except that those for county hospitals, as in the present Code, are subject to an election upon petition, and "general county purpose" bonds which require an election, either originally or upon petition. A county's power to issue bonds jointly with another

governmental body, which is probably presently covered under chapter 28E, is specified. Only one new purpose is added, which is for general county purpose bonds for facilities or improvements necessary for the operation of the county or the health and welfare of its citizens. This is in the city code. The present Code levy limitations for certain types of bonds are retained, although the limits may be exceeded upon a specific vote of the people.

Division IV, Part 4, Revenue Bonds, sections 460 through 470. These sections also use the purposes presently authorized for county revenue bonds, but make the procedures uniform. The purposes are listed as "county enterprises" or "combined county enterprises". The procedures follow very closely those authorized for cities. Section 470 is a new provision authorizing the county to establish a "county enterprise commission" to manage a county enterprise, such as a sanitary disposal project, hospital, or airport. This provision is adapted from chapter 388 relating to city utility boards.

Division V, Part 1, sections 500 through 511. This part outlines the powers and duties of the county auditor. The duties are categorized as general duties, duties as clerk to the board, duties relating to elections, issuance of warrants, books and records, collection of fees, and the financial report. Certain duties of the county auditor are transferred to the county assessor, treasurer, and engineer. The annual report of forest and fruit tree reservations to the state conservation commission is to be prepared and sent by the county assessor rather than the auditor. Concerning the establishment of secondary road assessment districts, duties relating to the preparation of reports, holding public hearings, giving notice, and related duties under chapter 311 are transferred from the auditor to the engineer. Also, duties relating to the processing and collection of special assessments for cities, the sale of real estate for delinquent taxes and the redemption of real estate sold for delinquent taxes under chapters 445, 446, and 447 are transferred from the auditor to the treasurer. Of the items required to be reported in the annual financial report, the amounts paid for condemning intoxicating liquor, the cost of convictions for liquor law violations, and the amount of fines collected, which are listed under section 333.11, subsection 13, are stricken.

Division V, Part 2, sections 550 through 558. This part relates to the powers and duties of the treasurer. The treasurer's duties are listed under general duties, duties relating to warrants, fund management, duties relating to motor vehicles, duties relating to taxation, and reports. Except for those duties transferred from the auditor, no other substantive changes are made.

Division V, Part 3, sections 600 through 608. This part relates to the powers and duties of the recorder. The duties of the recorder are listed as general duties, the general filing and recording fee, other fees, books and records, military personnel records, and federal tax liens. No substantive changes are made.

Division V, Part 4, sections 650 through 659. This part relates to the powers and duties of the sheriff. The duties of the sheriff are categorized as general duties, fees and mileage expenses, management of condemnation funds, standard uniforms, and care of prisoners. Under the requirement for standard uniforms, the department of general services is no longer required to purchase the uniforms for the county sheriffs and their deputies. Also, a number of specific requirements relating to wearing apparel, food preparation, and bedding for prisoners are deleted. The status of bailiffs as deputy sheriffs is rewritten so that bailiffs are deputy sheriffs to the extent that the sheriff delegates law enforcement powers, but they need not be subject to civil service or mandated law enforcement training. The sheriff is also given responsibility for vehicles seized and forfeited for the illegal transportation of controlled substances.

Division V, Part 5, sections 700 through 704. This part relates to the powers and duties of the clerk of the district court. The duties of the clerk are listed as general duties, books and records, and the collection and disposition of fees. There are no substantive changes.

Division V, Part 6, sections 750 through 758. These sections relate to the powers and duties of the county attorney. Sections 775 through 779 outline the appointment and duties of the public defender and court-appointed attorney. The qualifications of the county attorney are changed to provide that a person is not qualified to be county attorney if the person's license to practice law is suspended or revoked in any state. It is not clear under current law whether a person is disqualified from holding the office if the person's license to practice law in another state is suspended or revoked. Another change provides that if the county attorney and the assistant county attorneys are not able to carry out the duties of office because of illness or disqualification, an acting county attorney appointed by the district court would be compensated out of funds to be appropriated to the office of county attorney, not from funds already appropriated to the office. No other changes are made to the powers and duties of the county attorney. No changes are made to the procedures for appointment or powers and duties of the public defender or court-appointed attorney.

Division V, Part 7, sections 800 through 805. This part recodifies the powers and duties of the medical examiner. No substantive changes are made.

Division V, Part 8, sections 900 through 907. This part recodifies general duties which apply to all county officers, the collection and disposition of fees, the appointment of deputies, assistants, and clerks, the salaries of deputies, assistants, and clerks, and the county compensation board and its powers and duties. Under the general duties of county officers, a permissive

provision is stricken relating to the reproduction and destruction of original records and reports. Also, an additional exception is added to the general prohibition that a county officer or employee shall not allow a claim, issue a warrant, or execute a contract which will result in a county fund deficit during a fiscal year. The new exception relates to expenditures authorized by supervisors acting in the capacity of a trustee or director of a drainage district or other special district. No changes are made in provisions relating to procedures for the collection and disposition of fees or the appointment or compensation of deputies, assistants, and clerks.

Under provisions for the county compensation board, a change is made regarding who represents the school districts and cities at the conventions which select members of the county compensation board. The city's representative to the convention is to be selected by the mayor and council members rather than being the mayor only, and the school district's representative is to be selected by the school board members rather than each school board member attending the convention. Also, the terms of office of the county compensation board members are to be staggered, four-year terms.

The corresponding amendments for the bill are divided into two parts; those relating to powers and duties of the board, sections 1000 et seq., and those relating to county officers, sections 1200 et seq. Section 1084, the corresponding amendment to section 471.4, authorizes counties to exercise the power of eminent domain to the same extent as cities, and removes present limitations. Most of the corresponding amendments and repeals related to the board are for one of the following purposes:

1. To delete permissive statements which tend to limit home rule.
2. To move details relating to county levies and funds and county bonds to the bill and delete them from various parts of the Code.
3. To remove references to sections repealed by the bill.
4. To replace certain provisions which were not included in the rewritten parts of the bill.

Chapters 331 and 332 of the Code, which related primarily to the board, and all of the chapters which relate primarily to the various county officers are repealed and generally rewritten in the bill. Most of the corresponding amendments relating to the officers transfer certain duties from one officer to another, as recommended by the various officer associations, and adopted by the County Home Rule Study Committee.